Supreme Court, U.S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

CLARK GAREN,

PETITIONER,

vs.

SUPREME COURT OF NEVADA;
BOARD OF BAR EXAMINERS OF THE
STATE BAR OF NEVADA;

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

CLARK GAREN,
Counsel of Record
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BEST AVAILABLE COPY

QUESTIONS PRESENTED

(1) Does denying a professional license for not paying a debt with no rational connection to the profession contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

(2) Does denying admission to an attorney licensed in other states for 24 years with no discipline sought or imposed who supplied thirteen (13) character testimonials describing exceptionable moral character from individuals who have known him for 20 to 30 years for failure to demonstrate good moral character and a willingness to abide by the high ethical standards required of attorneys because he: (a) did not pay tax liens imposed for ownership of real property by Los Angeles County, California; (b) used letterhead designating his Nevada address with a statement he was licensed to practice law in California and Texas to correspond on legal matters in California and Texas; and (c) did not obtain a local business license to operate a computerized telephone answering machine from his residence; constitute exclusion from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

(3) May Nevada use a different standard to evaluate the moral character and a willingness to abide by the high ethical standards required of an attorney who graduated from a law school not accredited by the American Bar Association than is used to evaluate attorneys previously admitted to practice in Nevada or who graduated from law schools accredited by the A.B.A.

(4) Does conducting disciplinary and admission proceedings in secret with no record of decisions made public contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

(5) Does the failure to state a preliminary decision and give your Petitioner an opportunity to rebut the basis of the finding contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

PARTIES

Your Petitioner is CLARK GAREN, Attorney at Law, appearing in pro per, who is admitted to practice law before these Courts:

1. United States Supreme Court;
2. Ninth Circuit Federal Court of Appeals;
3. United States Tax Court;
4. Federal District Court for the Northern District of California;
5. Federal District Court for the Eastern District of California;
6. Federal District Court for the Central District of California;
7. Federal District Court for the Southern District of California;
8. Federal District Court for the District of Arizona;
9. Federal District Court for the Southern District of Texas;
10. Supreme Court of California;
11. Supreme Court of Texas.

The Respondents are the Supreme Court of Nevada and the Board of Bar Examiners of the State Bar of Nevada.

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1. OPINIONS BELOW

The Order Denying Petition entered on October 5, 1995 by the Nevada Supreme Court herein sought to be reviewed is unreported and printed in Appendix A.

2. JURISDICTION

The judgment of the Nevada Supreme Court was entered on October 5, 1995. The jurisdiction of this Court is involved pursuant to 28 U.S.C. 1254(1).

3. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

4. STATEMENT OF THE CASE

A. JURISDICTIONAL STATEMENT [S.C.R. 14(g)(i)]

Your Petitioner raised each "Question Presented" involving Federal issues before the Supreme Court of Nevada in the Verified Petition (Appendix I). The Nevada Supreme Court ruled against Petitioner on each "Question Presented" in its Order Denying Petition (Appendix A).

B. CONCISE FACTUAL STATEMENT

Petitioner graduated in 1971 from the University of West Los Angeles, School of Law, which is accredited by the State Bar of California but not by the American Bar Association. Your Petitioner was admitted in California on January 5, 1972 and in Texas on October 4, 1985. Your Petitioner also has held a California Provisional Elementary School Teaching Credential and a California Collection Agency Qualified Manager License.

No regulatory body has ever brought any action for discipline or imposed discipline on your Petitioner for any reason.

In 1987, your Petitioner moved to Las Vegas, Nevada where he represented clients in California and Texas on matters arising in the states where he was licensed.

Your Petitioner was not eligible for admission to practice in Nevada because he did not graduate from an law school accredited by the A. B. A. In 1988, your Petitioner contacted Richard M. Trachok, II of Bible, Hoy, Miller, Trachok and Wadhams to retain the firm to obtain a waiver of the A.B.A. graduation requirement. Mr. Trachok (who successfully represented the law students in the case of Bennett vs. State Bar, (1987), 103 Nev. 519, 746 Pac. 2d 143) refused because he felt the Court would not entertain any A.B.A. waivers and he felt it would be politically harmful for the firm to represent any applicant seeking a waiver of the A.B.A. requirement.

In 1992, your Petitioner entered the Master of Law (Taxation) program at Golden Gate University, a law school and program accredited by the American Bar Association. Your Petitioner completed the program and received a Master of Laws (Taxation) degree in January, 1993.

C. PROCEEDINGS FOR WAIVER OF THE A.B.A GRADUATION REQUIREMENT BEFORE THE COMMITTEE ON FUNCTIONAL EQUIVALENCY

Your Petitioner then sought admission to

the State Bar of Nevada asserting satisfaction of the A.B.A. graduation requirement by his receipt of a Master of Laws degree from an law school accredited by the A.B.A. Nevada rejected the application, but permitted your Petitioner to seek a waiver under Nevada Supreme Court Rule 57(c)(7).

Your Petitioner appeared before the Committee on Functional Equivalency of the State Bar of Nevada. He presented eight hours of testimony by himself and four clients and copies of various items of legal work, including letters written on his letterhead with his Nevada address.

Without notice, the Committee **immediately** changed the focus of the hearing from his legal education to his moral character and ethics.

Petitioner's letterhead listed his Nevada address and stated he was licensed to practice law in California and Texas and it complied with the letterhead rules of California and Texas. The Committee claimed the letterhead was misleading because it did not state Petitioner was not admitted to practice law in Nevada. Your Petitioner agreed it might mislead a Nevada attorney if it were used to corresponded about Nevada legal affairs, but insisted it had not misled anyone because it was **not** used to communicate with any Nevada attorney about any Nevada legal matter. The Committee disagreed and reported use of the letterhead proved that your Petitioner was not of good moral character.

The Committee inquired into the businesses of your Petitioner. Your Petitioner operated an on-line computer service from his residence in Las Vegas, Nevada. Customers dialed a phone number and listened to pre-recorded messages played by a personal computer. Customers never came to the residence. The business had no employees. Your Petitioner researched business licensing rules; determined that there was no business license category for his type of business; and no application for a license was required. Your Petitioner also believed no

license was required because the business did not involve any activity not associated with the usual and customary use of a residence. The Committee did not disagree with the conclusions, but believed Petitioner should have made a written application to obtain a formal ruling. The Committee found the anonymous inquiry to be evidence your Petitioner lacked good moral character because it believed he was not candid in dealing with local government.

The Committee then grossly misrepresented the evidence and recommended denial of the Petition to Waive the A.B.A. graduation requirement. Appendix D is the Committee Report; Appendix E is the Petition for Relief to the Nevada Supreme Court; and Appendix F is the Order Granting Petition. These documents are supplied to demonstrate the arbitrary and discriminatory plan to deny Petitioner his right to practice law in Nevada because he did not graduate from a law school accredited by the A.B.A. The report of the Committee raised ethical concerns about Petitioner, even though the Committee did not have this responsibility under Nevada Supreme Court Rule 51(7) and even though the Committee issued no notice it intended to investigate moral character.

Your Petitioner appealed to the Nevada Supreme Court. The Court overruled the denial of waiver but referred the ethical matters to the State Bar of Nevada for further proceedings.

Your Petitioner took and passed the July, 1994 Nevada Bar Examination, and is now eligible for admission to the State Bar of Nevada.

D. PROCEEDINGS BEFORE THE COMMITTEE ON CHARACTER AND FITNESS

On October, 1995, the Committee on Character and Fitness of the State Bar of Nevada issued written notice of a hearing to investigate Petitioner's relationship with Las Vegas attorney Jon P. Thornburgh and whether Petitioner engaged in the unauthorized practice of law. (Appendix G.)

During the hearing, the Committee questioned your Petitioner about the letterhead and the local business license. The Committee also went on a fishing expedition, asking about your Petitioner's copyrights, Federal Income Taxes; Depreciation Schedules; Petitioner's Place of Residence; Where Petitioner Files Federal Income Taxes; Where Petitioner Registered to Vote; and anything else any member of the Committee could think of to develop a basis to attack his moral character and deny him admission. The hearing was more of an inquisition than an investigation, and it was clear the decision **had already been made!** The Committee questioned your Petitioner about a new credit report showing that your Petitioner did not pay two unsecured property tax liens on two parcels of real property he previously owned in Los Angeles County, California. He stated he had not paid the liens because the tax valuation was twice the price he just paid, and he did not believe the tax was fair because the properties were not valued fairly. Your Petitioner testified he exercised his right of free speech and withheld voluntary payment to require the County of Los Angeles to use its lien enforcement procedures to obtain payment. Your Petitioner testified that the liens would be paid eventually when he sold real property in Los Angeles County he would inherit.

The Committee ignored numerous declarations of Good Character and live testimony submitted from individuals who had known your Petitioner for 20 to 30 years; ignored the presumption of good moral character and a willingness to abide by the high ethical standards required of attorneys established by 24 years in the practice of law without any disciplinary action, and found your Petitioner failed to demonstrate good moral character and a willingness to abide by the high ethical standards required of attorneys and recommended he be denied admission to the Nevada bar because he:

1. did not pay the unsecured property tax liens

to Los Angeles County;
2. did not designate on letterhead with a Las Vegas, Nevada address that Petitioner was not admitted to practice law in Nevada even though the letterhead was not used to correspond with Nevada attorneys about Nevada legal matters;
3. did not make a formal application for a local business license for his on-line computer information service.
Appendix H is the Committee Recommendation.

Your Petitioner timely sought review by the Nevada Supreme Court. Appendix I is a copy of the Petition. Appendix B consists of the testimonials submitted by your Petitioner. Appendix L is a copy of Petitioner's California discipline and complaint record. (No complaints were ever made against your Petitioner in Texas.) Appendix I is the Answer to the Petition. Appendix J is the reply to the State Bar Answer.

On October 5, 1995, the Nevada Supreme Court denied the Petition. The Court held your Petitioner failed to demonstrate good moral character and a willingness to abide by the high ethical standards required of attorneys. (Appendix A).

5. REASONS FOR GRANTING THE WRIT

Governments are starting to condition professional licenses on payment of debt with no rational connection to the professional service (i.e. spousal and child support, student loan payments, welfare contributions, etc.) This Court should establish the constitutional standards and limits to use of the governmental power to license as a debt collection tool NOW!

This Court permitted the broad and vague language requirement of "Good Moral Character" because no state ever adapted it to fit personal views and predilections, or turned the language into a dangerous instrument for the arbitrary and discriminatory denial of the right to practice law. This Court stated:

"The few reported cases in which bar

admission has been denied on character grounds in New York all appear to have involved instances of misconduct **clearly inconsistent** with the standards of a lawyers calling."
Law Students Civil Rights Research Council, Inc. vs. Wadmond, *(1971) 91 S.Ct. 720, 725,* 401 U.S. 154, 160, 27 L.Ed. 2d. 749, 756

This Court prohibits states from excluding a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. While states can require high standards of qualification, such as good moral character, this Court requires that **any qualification must have a rational connection with the applicant's fitness or capacity to practice law.** This Court refuses to permit a state to exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory.

This decision by the Nevada Supreme Court is in conflict with every decision of both this Court and every other state court of last resort on this important Federal Question.

As a Judicial Act, this Judgment can only be appealed to this Court. If this Court refuses Certiorari, the only remedy is to attack the use of broad character and fitness language like "Good Moral Character" in Court Rules through action in the Federal District Courts. This would jeopardize similar rules which are being properly administered by every other state.

Since the term "Good Moral Character" is vague, easily adapted to fit personal views and predilections, and a dangerous instrument for arbitrary and discriminatory denial of the right to practice law, this Court must review every denial of admission on character grounds that **do not involve** instances of misconduct **clearly inconsistent** with the standards of a lawyers calling. This case involves such a wrongful

denial of admission.

Justice Black observed in his dissenting opinion in Law Students Civil Rights Research Council, Inc. vs. Wadmond:

> "...a state may require that applicants and members of the Bar possess the good "character and general fitness requisite for an attorney". But it must be remembered that the right of a lawyer or Bar applicant to practice his profession is often more valuable to him than his home, however expensive that home may be. Therefore I think that when a state seeks to deny an applicant admission or to disbar a lawyer, it must proceed according to the most exacting demands of due process of law. This must mean at least that the right of a lawyer or Bar applicant cannot be left to the mercies of his prospective or present competitors. When it seeks to deprive a person of the right to practice law, a State must accord him the same rights as when it seeks to deprive him of any other property."
> Law Students Civil Rights Research Council, Inc. vs. Wadmond, (1971), 91 S. Ct. 720, 731, 401 U.S. 154, 175, 27 L. Ed. 2d 749, 765

but the majority noted no actual abuse:

> "We note at the outset that no person involved in this case has been refused admission to the New York Bar. Indeed, the appellants point to no case in which they claim any applicant has ever been unjustifiably denied permission to practice law in New York State under these or earlier statutes, rules, or procedures. The basic thrust of the appellant's attack is, rather, that New York's system by its very existence works a "chilling effect" upon the free exercise of the rights of speech and association of students who

must anticipate having to meet the requirements.

The three-judge District court, although divided on other questions, was unanimous in finding no constitutional infirmity in New York's statutory requirement that applicants for admission to its Bar must possess "the character and general fitness requisite for an attorney and counselor at law." (Citations omitted.) Long usage in New York and elsewhere has given well-defined contours to this requirement, which the appellees have construed narrowly as encompassing no more than "dishonorable conduct relevant to the legal profession," (citations omitted). **The few reported case in which bar admission has been denied on character grounds in New York all appear to have involved instances of misconduct clearly inconsistent with the standards of a lawyers calling.**

This Court itself requires of applicants for admission to practice before it that "their private and professional characters appear to be good." Every State, plus the District of Columbia, Puerto Rico, and the Virgin Islands requires some similar qualification."
Law Students Civil Rights Research Council, Inc. vs. Wadmond, (1971), 91 S. Ct. 720, 724-725, 401 U.S. 154, 160, 27 L. Ed. 2d 749, 756

Sharp conflicts and close divisions have arisen in this Court on when the States can refuse to permit applicants to practice law. But all the participating Justices were able to agree that Rudolph Schware was unlawfully denied admission in New Mexico because:

"A State cannot exclude a person from the practice of law or from any other

occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. (Citations omitted.) A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, **but any qualification must have a <u>rational</u> connection with the applicant's fitness or capacity to practice law.** (Citations Omitted.) Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. (Citations omitted.)

Here the State concedes that Schware is fully qualified to take the examination in all respects other than good moral character. Therefore, the question is whether the Supreme Court of New Mexico on the record before us could reasonably find he had not shown good moral character.

<u>Schware vs. Board of Bar Examiners of the State of New Mexico</u>, (1957), 353 U.S. 234, 239-240, 77 S. Ct. 752, 756, 760, 1 L. Ed. 2d 796, 801-802

The State contends that even though the use of aliases, the arrests, and the membership in the Communist Party would not justify exclusion of petitioner from the New Mexico bar if each stood alone, when all three are combined his exclusion was not unwarranted. We cannot accept this contention. In the light of petitioners forceful showing of good moral character,

the evidence upon which the state relies - the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's - cannot be said to raise substantial doubts about his present good moral character. **There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law.**

On the record before us we hold that the State of New Mexico deprived petitioner of due process in denying him the opportunity to qualify for the practice of law."

Schware vs. Board of Bar Examiners of the State of New Mexico, (1957), 353 U.S. 234, 247-248, 77 S. Ct. 752, 760, 1 L. Ed. 2d 796, 806

This Court expressed concern of the potential for abuse of the broad term "good moral character":

"The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However the term, in itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague disqualification, which is easily adapted to fit personal views and predilections, **can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law."**

While we do not have the benefit of a definition of "good moral character" by

the California Supreme Court in this case, counsel for the State tells us that the definition of that term adopted in California "stresses elements of honesty, fairness and respect for the rights of others and for the laws of the state and the nation." The decisions of the California courts cited here do not support so broad a definition as claimed by counsel. These cases instead appear to define "good moral character" in terms of an absence of proven conduct or acts which have been historically considered as manifestations of "moral turpitude." To illustrate, California has held that an applicant who did not have good character who had been convicted of forgery and had practiced law without a license, or who had obtained money by false representations or had committed fraud upon a court, or who had submitted false affidavits to the Committee along with his application for admission. It should be emphasized that neither the definition proposed by counsel nor those appearing in California cases equates unorthodox political beliefs or membership in lawful political parties with bad moral character. Assuming for the purposes of this case that counsel's broad definition of "good moral character" is the one adopted in California, the question is whether on the whole record a reasonable man could fairly find that there were substantial doubts about Konigsberg's "honesty, fairness and respect for the rights of others and for the laws of the state and nation."

A person called on to prove his character is compelled to turn to the people who know him. Here, forty-two individuals who had known Konigsberg at different times during the past twenty years attested to

his excellent character. These testimonials came from persons in every walk of life.

Konigsberg vs. State Bar of California, (1957) 77 S. Ct. 722, 728-729, 353 U. S. 252, 263-265, 1 L. Ed. 2d 810, 819-820

Other witnesses testified to Konigsberg's belief in democracy and devotion to democratic ideas, his principled convictions, his honesty and integrity, his conscientiousness and competence in his work, his concern and affection for his wife and children and his loyalty to the country. These, of course, have traditionally been the qualities that make up good moral character. The significance of the statements made by these witnesses about Konigsberg is enhanced by the fact that they had known him as a adult while he was employed in responsible professional positions. **Even more significant, not a single person has testified that Konigsberg's moral character was bad or questionable in any way**.

We recognize the importance of leaving States free to select their own bars, but it is equally important that the **State not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association**. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is **also** important to society that lawyers be unintimidated - free to think, speak, and act as members of an Independent Bar. In this case we are compelled to conclude that there is no evidence in the record which rationally

justifies a finding that Konigsberg failed to establish his good moral character or failed to show that he did not advocate forceful overthrow of the Government. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, it is difficult to comprehend why the State Bar Committee rejected a man of Konigsberg's background and character as morally unfit to practice law. As we said before, the mere fact of Konigsberg's past membership in the Communist Party, if true, without anything more, is not an adequate basis for concluding that he is disloyal or a person of bad character. **A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the Committee's action."**

Konigsberg vs. State Bar of California, (1957) 77 S. Ct. 722, 733-734, 353 U. S. 252, 274-275, 1 L. Ed. 2d 810, 825

This Court relies on State law to determine what constitutes good moral character. The evidence submitted proved Petitioner satisfied the standards under Nevada law.

A. THE LETTERHEAD ISSUE

The Nevada Bar found:

"While the letterhead does not make it clear that applicant is not licensed in Nevada, the ambiguity raised by it is not sufficient to conclude that he is participating in the unauthorized practice of law in the State of Nevada". (Appendix H)

In Re Waters, (1968), 84 Nev. 712, 447 Pac. 2d. 661 held otherwise. Applicant Waters was also admitted to practice law in Texas, and had letterhead reading Kermit L. Waters, Attorney at Law, P. O. Box 502, Childress, Texas 79201. Waters then moved to Nevada; crossed out the

Texas address; and typed in his Nevada address. Waters used the modified letterhead to write letters to two prisoners in California (where Waters was not admitted to practice) soliciting legal business.

The State Bar of Nevada found that Waters held himself out as an attorney licensed to practice law in Nevada and that he also practiced law in California without a license without association of California Counsel. The Nevada Supreme Court disagreed, and characterized the Bar's finding as:
"without persuasion since they appear to rest upon suspicion rather than solid fact." and that

> "The rules of professional conduct do not preclude a Texas attorney from corresponding with a California prisoner about his California case, nor do those rules suggest that letters from the Texas counsel are to be mailed from some point in Texas."
> In Re Waters, (1968), 84 Nev. 712, 715, 447 Pac. 2d. 661, 664

The conduct of the applicant in In Re Waters, supra, is more egregious than that of Petitioner. Petitioner placed the notation, "Admitted to practice in California and Texas" on the letterhead to comply with the ABA Model Code and notify correspondents he was not admitted to practice in Nevada, while Waters did not. Waters solicited new clients in a state where he was not licensed to practice (California), while Petitioner made **no** solicitations and corresponded only with existing clients or opposing attorneys in California and Texas.

B. THE TAX LIENS AND BUSINESS LICENSE ISSUE

The Nevada Bar held:

> "Failure to satisfy the Los Angeles County tax liens demonstrates, in itself, that the applicant has failed to carry the burden of establishing his fitness to practice law in the State of Nevada." (Appendix H)

The Nevada Supreme Court disagreed in Ex Parte Abbatangelo, (1964), 80 Nev. 584, 397 Pac 2d. 182, where an attorney was admitted to practice in Nevada despite proven forgery and failure to support the attorney's wife and minor children.

The attorney had forged his wife's name to a bank note. The Nevada Supreme Court excused this because the business practice of the attorney was forging his wife's name to banking documents, and the bank and the wife knew this. The failure to pay spousal and child support was disregarded because the attorney said he had no money. The Court held:

> "The board in its report to this court stated that its adverse recommendation was in part due to the demeanor of petitioner during its interviews with him. We do not believe that the unfavorable impression he gave to the board even considered in connection with the other unfavorable evidence should be a cause for denial of petitioner's application for admittance to practice law in Nevada. **Our reason for such conclusion stems from the fact that the record is entirely bare of ANY professional misconduct while petitioner practiced law in Pennsylvania** or of any unethical conduct in connection with his employment in Las Vegas. In fact, petitioner's good moral character is supported by communications from many Pennsylvania and Las Vegas attorneys."
> Ex Parte Abbatangelo, (1964), 80 Nev. 584, 587, 397 Pac 2d. 182, 184

Conviction of the Federal Crime of Willful Failure to File Federal Income Tax Returns is not an offense involving moral turpitude in Nevada (In re Cochrane, (1976), 92 Nev. 253, 549 Pac. 2d 328). Mr Cochrane was convicted of willful failure to file federal income tax returns. The Nevada Supreme Court held this was not an offense involving moral turpitude, but

imposed minor discipline under Nevada Supreme Court Rule 204.

Discipline was also not imposed on an attorney and former Federal District Court Judge convicted of willfully filing false Federal Income Tax Returns because:

> "...(1) the paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole;
>
> * * *
>
> (3) this court must also consider the isolated nature of an attorney's conduct as well as his prior, exemplary professional standing...."
>
> State Bar of Nevada vs. Claiborne, (1988), 104 Nev. 115, 210, 756 Pac. 2d 464, 526

Claiborne, supra, mentioned another unreported case of an attorney who was convicted of income tax evasion and suspended from the practice of law for six months. (State Bar of Nevada vs. Claiborne, (1988), 104 Nev. 115, 229, 756 Pac. 2d 464, 538)

The primary distinction between admission proceedings and disciplinary proceedings in Nevada is who bears the burden of proof. The overall purpose of each proceeding is the same; to protect the public from persons unfit to serve as attorneys. (In re Bowen, (1968), 84 Nev. 681, 684, 447 Pac. 2d 658, 660))

C. THE PRIMARY EVIDENCE OF MORAL CHARACTER OF A LICENSED ATTORNEY IS THE RECORD OF THE ATTORNEY IN THE OTHER STATE

In Ex Parte Kellar, (1965), 81 Nev. 240, 401 Pac. 2d 658 the Nevada Supreme Court admitted a Black attorney who practiced in New York for 20 years. Nevada denied admission because he failed to disclose misdemeanor criminal proceedings in New York (his home state) on his application. After his denial, he

violated Nevada Canon 20 by giving a media interview and claimed he was the victim of discrimination because of his race.

The Court admitted the applicant because:

"* * * The esteem of some 30 years of seemly endeavor and achievement is now in jeopardy because of this rash appeal. We could readily understand and forgive his impatientence with our admission procedures but we have no patience with his percept of the sinister in the conduct and conclusions of the board and of the committee. Our concern here is with the impress the discipline of our profession has made upon him. Years of industry, achievement, good citizenship and honorable conduct are not compurgators; these years testify to his regard for the profession and his obligations as a professional person. We think it harsh then to deny the petitioner admission because of a single offense of this nature, here disciplined, according to the Cannon.

We are less troubled by his candidness in reporting the charge against him in New York. He did not shirk his responsibility to the people of the State of New York. If he did this in concern with his application in this state he did not as an opportunist, forthwith, report to this court. We, in decent respect to a man who meets his private obligations, write this down as a shrewd and in no manner dishonest appraisal of the complainant's demand. His policy in this action was not discreditable and he has not been disciplined by the bar of New York."

Ex Parte Kellar, (1965), 81 Nev. 240, 247-248, 401 Pac. 2d 616, 620

The Federal District Courts hold "Admission

to a state bar creates a presumption of good moral character that cannot be overcome merely by the whims of the District Court" In Re Evans, (1975) 524 F. 2d. 1004. (See also Flynt vs. Leis, (1977) 434 F. Supp 481, which was overruled on other grounds by this Court in Leis vs. Flint (1979) 439 U.S. 438, 58 L. Ed. 2d 717, 99 S. Ct. 698).

D. THE NEVADA ADMISSION PROCEDURE VIOLATES PROCEDURAL DUE PROCESS

The procedural due process requirements in Bar admission cases are:

> " We are not here concerned with grounds which justify denial of a license to practice law but only with what procedural due process requires if the license is to be withheld. This is the problem which Chief Justice Taft averted to in Goldsmith vs. United States Board of Tax Appeals, 170 U.S. 117, 46 S. Ct. 215, 70 L. Ed. 494, involving an application of a certified public account to practice before the Board of Tax Appeals. Chief Justice Taft writing for the Court said:
>
> "We think that the petitioner having shown by his application that being a citizen of the United States and a certified public account under the laws of a state, he was within the class of those entitled to be admitted to practice under the board's rules, he should not have been rejected upon charges of his unfitness without giving him an opportunity by notice for hearing and answer. The rules adopted by the board provide that 'the board may in its discretion deny admission, suspend or disbar any person.' But this must the construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing, and opportunity to answer for the

applicant as would constitute due process." Id., p. 123, 46 S. Ct. p. 217"

We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word deprives a person of his livelihood. (citation omitted.) That view has been taken by several state courts when it comes to procedural due process and the admission to practice law. (citations omitted.)

This result is sought to be avoided in several ways. First, it is said that the Committee's action is merely advisory, that it is an investigator and not a trier of facts, since under Rule 90 of the Judiciary Law it is the Appellate Division that ultimately must be convinced of the applicant's good character. The answer is that "[u]nless otherwise ordered by the Appellate Division" (New York Rules of Civil Practice, Rule 1(d), a favorable certificate from the Committee is a requisite to admission by the Appellate Division; and where, as here, the Appellate Division has held no hearings of its own to determine an applicant's character, the role of the Committee is more than that of a mere investigator.

Willner vs. Committee on Character and Fitness, (1963), 373 U.S. 96, 104, 83 S. Ct. 1175, 1180, 10 L. Ed. 2d 224, 229-230

Third, it is said that the record shows that Petitioner was not rejected on the basis of *ex parte* statements but on the basis of his own statements to the Committee. If the Court of Appeals reached this conclusion, the only constitutional question which was presented and which it could have "necessarily" passed on was

whether petitioner was denied due process by not being informed of and allowed to rebut the bases for either the Committee's or the Appellate Division's failure to find his good character. **It does not appear from the record that either the Committee or the Appellate Division, at any stage of these proceedings, ever apprised petitioner of its reasons for failing to be convinced of his good character.** Petitioner was clearly entitled to notice of and a hearing on the **grounds for his rejection** either before the Committee or before the Appellate Division. (Citations omitted.) There seems no question but that petitioner was apprised of the matters the Committee was considering.

"But a 'full hearing' - a fair and open hearing - requires more than that. * * * Those who are brought into contest with * * * Government in a quasijudicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be hearing upon its proposals **before it issues its final command**. (Morgan v. United States, 304 U.S. 1, 18-19, 58 S. Ct. 773, 776, 82 L. Ed. 1129.

Petitioner had no opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing. Yet, "[t]he requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps. (citations omitted.)

Willner vs. Committee on Character and Fitness, (1963), 373, U.S. 96, 105-106,

83 S. Ct. 1175, 1181, 10 L. Ed. 2d. 224, 230-231

The Committee notified Petitioner it was **primarily concerned with** the "relationship between Petitioner and a Las Vegas Attorney" **and** "the unauthorized practice of law" (Appendix G). The Committee **never** issued Petitioner notice it was investigating the tax lien or notice the tax lien constituted lack of moral character. After the Committee obtained the evidence, it **never** notified your Petitioner of a preliminary decision and never afforded Petitioner an opportunity to argue either the tax lien, his first amendment rights, or his moral character.

Rule 70.5 of the Nevada Supreme Court Rules (Appendix C) makes all disciplinary and admission proceedings confidential and not reported. This deprived Petitioner of procedural due process because no judicial interpretations of the rules are available. Rule 70.5 allows the State Bar of Nevada and the Nevada Supreme Court to make arbitrary, capricious, and **different** decisions in private without public scrutiny.

E. STANDARD OF EVIDENCE IN NEVADA

In admission cases, the civil "preponderance of the evidence" standard applies to Character and Fitness issues on Admission. In Re Farris (1971), 87 Nev. 508, 489 Pac. 2d. 1156. Applicant Farris lied about his Nevada residency and traffic offenses on his bar application. Although the applicant later confessed his wrongdoing, the State Bar of Nevada still recommended against his admission. The Nevada Supreme Court admitted him because:

> "We cannot, of course, know conclusively that petitioner's ordeal of the last two years has been sufficient to stay him from like conduct in the future. We cannot know, nor can he prove, that he has matured as much as the record before us would make it appear. We do believe,

however, the evidence more than preponderates in his favor, and that, in light of all material considerations, we should permit petitioner an opportunity to practice the profession for which he has prepared himself during the past six years."
In Re Farris (1971), 87 Nev. 508, 511 489 Pac. 2d. 1156, 1157

6. ARGUMENT

Your Petitioner demonstrated he is of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court.

The State of Nevada denied admission because they don't like your Petitioner; because they don't like his educational background, or both; **not because of failure to demonstrate good moral character and a willingness to abide by the high ethical standards required of attorneys!** Even though the A.B.A. educational requirement was waived, the Nevada Supreme Court still seeks to impose a different moral standard on Petitioner than that it imposes on either its existing members or its bar applicants from law schools accredited by the A. B. A.

The extent of the political problem in Nevada created by the graduates of California law schools not accredited by the A. B. A. is reflected in the opinion issued in Bennett vs. State Bar, (1987), 103 Nev. 519, 746 Pac. 2d 143. Bennett involved graduates of a law school established in Reno, Nevada. The law school requested a waiver of the A.B.A. graduation requirement. The court refused, and requested the school seek A.B.A. accreditation. When the school was unable to meet the unreasonable financial requirements to attain A.B.A. accreditation, the school dissolved. The Nevada

Supreme Court then had a political problem of the law school graduates, all but one of whom successfully passed the Nevada Bar Examination, but were not yet admitted to practice. The Court resolved its political problem by admitting the graduates, but this passage from the opinion shows the magnitude of the political problem in Nevada of graduates of California law schools not accredited by the A.B.A.:

> "Finally, although it does not oppose the granting of this petition, the Board of Governors of the State Bar of Nevada contends that any relief granted to petitioners must preserve the integrity of SCR 51(3). Specifically, the Board expresses concern that the granting of this petition may open the floodgates to unqualified graduates of inferior law schools, which are not accredited by the ABA, who might seek admission to the State Bar of Nevada, thereby adversely affecting the quality of the Bar. "
> Bennett vs. State Bar, (1987), 103 Nev. 519, 526, 746 Pac. 2d 143, 148

In Re Birmingham, (1994) 866 Pac. 2d 1150, 110 Nev. 70, contains this expression of reservations by the Nevada Supreme Court in admitting someone convicted of large scale smuggling of marijuana:

> "There is no way of telling how many lives, especially among our youth, were destroyed or devastated by the drugs flown into this country by our new admittee to the legal profession. The full extent and nature of the consequences resulting from the hundreds or thousands of pounds of marijuana smuggled here by Birmingham can never be measured. Moreover, we will never know the names or the number of victims, past and future, that have suffered and will suffer, at least in part, from Birmingham's crimes. Birmingham will now turn to the practice of law, but his

victims will continue to mount in the years to come."
In Re Birmingham, (1994) 866 Pac. 2d 1150, 1163, 110 Nev. 70

The Committee on Character and Fitness sought to justify exclusion of your Petitioner with similar reasons:

"We must ask, in these times when lawyers are held in such disrepute: "Is this the example that we wish to hold out to the public that reflects the soul of the legal profession?" The answer is a resounding "No!"" Ignoring legal obligations, flaunting lawful process, using the system - not to assure justice is done but for personal objectives, are not the standards to which practicing attorneys should aspire."
Answer of State Bar of Nevada
Appendix H,

In every reported case, the Nevada Supreme Court limits inquiry of the Board of Bar Examiners to determining whether the applicant is "of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court". Now, without notice, formal action or rule change, Petitioner must prove he is "the example that we wish to hold out to the public that reflects the soul of the legal profession?"

Petitioner attended two hearings before the State Bar of Nevada. During more than 12 hours of testimony, the State Bar of Nevada characterized your Petitioner as uneducated, incompetent, dishonest, and an embarrassment to the legal profession. In support of these unwarranted conclusions, the State Bar of Nevada has completely disregarded or mischaracterized the testimony presented by numerous witnesses,

including clients, friends, and colleagues who have known your Petitioner for close to 20 years or more!

The State Bar of Nevada reached its conclusion before the first word of testimony was presented. The State Bar of Nevada made its decision the moment it heard that your Petitioner was a graduate of a California unaccredited law school.

Gerald A. Smith, one of the witnesses, said to your Petitioner, "Clark, their job is to keep people out and in your case, they just don't know how to do it."

The arbitrary and capricious nature of the findings of the trier of fact is illustrated by this display of evidence presented to the Nevada Supreme Court:

EVIDENCE AGAINST:

1. Failure to pay Los Angeles County Local Property Taxes.
2. Failure to indicate on letterhead with Nevada address that Petitioner was not admitted to practice in Nevada.
3. Failure to make formal written application for local business license after inquiry showed no license was required.

EVIDENCE IN FAVOR:

1. 24 years of practice in California without discipline being imposed.
2. 10 years of practice in Texas without discipline being imposed.
3. **Declaration of Jerome Fishkin, Attorney at Law, expert witness in California Attorney Discipline matters**
4. Testimony of Mary McGee about 30 year personal and professional relationship.
5. Testimony of Attorney Jon P. Thornburgh about 20 year personal and professional relationship.
6. Testimony of Gerald A. Smith about 20 year personal and professional relationship.
7. Declaration of Virginia D. Hunter, Ph.D. about a 23 year personal and business

relationship
8. Declaration of Michael B. Farber, M.D., about a 45 year personal and business relationship
9. Declaration of Mary McGee about a 30 year personal and professional relationship
10. Declaration of Eric Dereng describing activities of Petitioner at his own expense to protect the reputation of attorneys
11. Declaration of James B. Fitzpatrick about 20 year personal and professional relationship
12. Declaration of Kathy Hodgkin, Attorney at Law, describing her employment by Petitioner
13. Declaration of Scott Middleton Hall, Attorney at Law, describing his employment by Petitioner and that he still employs Petitioner to represent him in difficult matters
14. Declaration of Gary K. Hahne, Attorney at Law, an attorney in Texas who describes his experience on a case and retained your petitioner to represent him in personal matters
15. Declaration of Frank Roesch, Attorney at Law, who served with your Petitioner on the California Judicial Council Forms Committee, describing a 25 year relationship

A. SUMMARY

The Committee, after extensive investigation, cites one single action (the decision to exercise the right to free speech by paying a Los Angeles Property Tax lien by the lien enforcement process instead of voluntary payment) that demonstrates your Petitioner is not of good moral character and not willing and able to abide by the high ethical standards required of attorneys. This one single act is not a crime; not an act of moral turpitude in Nevada; and not a violation of the Professional Rules of Conduct for Attorneys in Nevada or in any state where your Petitioner is licensed.

Since the Nevada Supreme Court held the criminal act of failing to file Federal Income Tax returns is **not** a crime of moral turpitude, there is no basis to hold the failure to pay local property tax liens (which is **NOT** a

criminal act; not an act of moral turpitude; and not an act prohibited by any Court Rules) is a reason to deny admission to your Petitioner.

Since the Nevada Supreme Court held forgery of a wife's signature on notes and failure to pay court ordered spousal and child support are not acts of moral turpitude or a reason to deny admission, there is no basis to hold the failure to pay local property tax liens (which is **NOT** a criminal act; not an act of moral turpitude; and not an act prohibited by any Court Rules) is a reason to deny admission to your Petitioner.

An attorney is not deprived of his civil rights. Every citizen has the civil right to exercise the First Amendment Right of free speech by either voluntarily paying a civil judgment or a tax lien or, in the alternative, electing to pay a civil judgment or tax lien through the lawful execution process. The decision to pay a tax lien through the execution process is a business decision and a lawful use of civil rights and the first amendment right of free speech; it is not an act of moral turpitude and is not a reason to deny admission because of a failure to demonstrate good moral character and willingness and ability to abide by the high ethical standards required of attorneys.

The Nevada Supreme Court ignored its own precedent by disregarding the isolated nature of their claimed misconduct and the prior, exemplary professional standing of Petitioner. The isolated act of failing to pay a local property tax lien is not a serious criminal act like Judge Claiborne's conviction of filing false federal income tax returns; Attorney Cochrane's conviction of failing to file Federal Income Tax Returns; or Attorney Birmingham's Federal Felony Conviction as a major smuggler of narcotics. The prior, exemplary professional standing of 24 years warrants the same consideration the Nevada Supreme Court gave to Judge Claiborne, Attorney Cochrane, Attorney Birmingham, and all its other attorneys and applicants.

Any evaluation of the evidence presented by an objective, fair, and impartial trier of fact would have resulted in the admission of your Petitioner to the Nevada Bar. The decision of the Nevada Supreme Court can only be characterized as the **arbitrary and discriminatory denial of the right to practice law because there is no evidence in the record which rationally justifies a finding that your Petitioner is morally unfit to practice law.**

While the policy is to leave the States free to select their own bars, this Court cannot permit a **State to exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association**. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is **also** important to society that lawyers be unintimidated - free to think, speak, and act as members of an Independent Bar.

There is **no** evidence in the record which rationally justifies the finding your Petitioner failed to establish his good moral character. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, there is no adequate basis to conclude your Petitioner is disloyal or a person of bad character. **A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the action of the Nevada Supreme Court.**

This Court must grant this Petition for Writ of Certiorari to prevent abuse of the term "good moral character" as a qualification for bar members. This Court has noted the language, "Good Moral Character" is unusually ambiguous and can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer and is such a vague disqualification that it can easily be adapted

to fit personal views and predilections, and be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law. This Court has permitted use of this language because the only reported cases in which bar admission has been denied on character grounds are instances of misconduct clearly inconsistent with the standards of a lawyers calling. **This is no longer true, because Nevada has denied admission to its bar without misconduct clearly inconsistent with the standards of a lawyers calling.**

B. CONCLUSION

Your Petitioner has been excluded from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Your Petitioner has been excluded from the practice of law because the statutory scheme to qualify for admission in Nevada contravenes the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Your Petitioner prays that this Court find that the State of Nevada has deprived your Petitioner of due process in denying him admission to the State Bar of Nevada, and that this Court reverse the judgment of the Nevada Supreme Court and order that the Nevada Supreme Court admit your Petitioner to the practice of law in Nevada.

Dated: 12/11/1995 LAW OFFICES OF CLARK GAREN

BY

CLARK GAREN
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(909) 688-0900

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: ADMISSION OF CLARK GAREN) NO. 26595
TO PRACTICE LAW IN NEVADA.)
)

FILED

OCT 05 1995
JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY: /s/ J. RICHARDS
CHIEF DEPUTY CLERK

ORDER DENYING PETITION

The Board of Bar Examiners of the State Bar of Nevada has filed in this Court its recommendation that Clark Garen be denied admission to the practice of law in this state for failing to demonstrate good moral character and a willingness to abide by the high ethical standards required of attorneys and counselors at law. See SCR 51(e).

On June 17, 1994, this court granted Garen a waiver of SCR 51 (3), the rule requiring that he graduate from an accredited law school in order to take the bar. Admission of Garen, Docket No. 25545 (Order Granting Petition, June 17, 1994). This Court, however, referred Garen to the Committee on Moral Character and Fitness of the State Bar of Nevada because of concerns presented by the record. Thereafter, Garen sat for and passed the bar examination. On or about December 20, 1994, the Committee submitted to this court its recommendation that Garen be denied admission to the practice law in this state. This petition for review followed.

Garen's first three contentions are that: (1) the Committee exceeded the appropriate scope of its investigation; (2) the findings of fact

do not support the conclusions of the Committee; and (3) his actions should not prevent him admission because they would not warrant professional discipline. In essence, Garen contends that he has the requisite moral character to practice law in this state. Having reviewed the record of the instant proceeding, the record from Garen's SCR 51(3) waiver proceeding, the pleadings, and the exhibits, we conclude that Garen has not demonstrated that he possesses good moral character and a willingness to abide by the high ethical standards required of attorneys and counselors at law. See S.C.R. 51(4).

Garen further contends that SCR 51(4) is unconstitutional because it does not state the standard of proof that an applicant must meet. Specifically, Garen contends that the rule does not specify whether the standard is preponderance of the evidence or clear and convincing evidence. This contention lacks merit. Assuming arguendo that the standard is a preponderance, Garen has not met his burden.

Garen next contends that SCR 70.5, providing for the confidentiality of petitions for admission, denied him due process. Specifically, Garen contends that the hearing and appeal process is unfair because he has not been adequately noticed regarding the nature and character of evidence that this cost has previously accepted as sufficient to demonstrate good moral character. Garen cites no support for this contention. This court therefore does not have to address the contention. See SIIS v. Buckley, 100 Nev. 3786,m 682 P. 2d 1387 (12984). Further, Garen's contention lacks merit.

Garen finally contends that the Committee denied him due process by addressing issues beyond those stated in the notice of hearing. Specifically, Garen contends that the Committee only noticed him that it would be investigating whether he had engaged in the unauthorized practice of law, not that it had other concerns. This contention lacks merit. The notice to Garen

said that the scope of the hearing would be "[i]ncluding, but not limited to, the unauthorized practice of law in the State of Nevada and such other matters that may reflect on your character and fitness for the practice of law."

Accordingly, we approve the recommendation of the Committee. We deny with prejudice Garen's application for admission to practice law in the State of Nevada.

IT IS SO ORDERED[1]

/s/ STEFFEN, C.J.

/s/ YOUNG, J.

/s/ SPRINGER, J.

/s/ SHEARING, J.

/s/ ROSE, J.

cc: Ron Alling, Chairman,
Board of Bar Examiners
Keith Lee, Chairman,
Character and Fitness Commission,
C. A. Olendorff, Bar Counsel,
Deena Trueblood, Admissions Director
Executive Director, State Bar of Nevada
Clark Garen

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[1]We have received and considered Garen's reply to the Board of Bar Examiner's answer. Cause appearing, we grant Garen's ex parte motion for permission to file a reply and direct the clerk of this court to file such reply.

APPENDIX "B"

DECLARATION OF JEROME FISHKIN

1. I am an active member of the State Bar of California. I was admitted to practice in California in 1971, at which time I was also admitted to practice before the U.S. District Court, Northern California; and the U.S. Court of Appeals, Ninth Circuit. In 1978, I was admitted to practice before the U.S. Supreme Court. I am now, and have always been, a member in good standing of each of those courts since I was admitted.

2. From 1971 to 1978, I was in the private practice of law in San Francisco, California. From 1978 to 1992, I was employed by the State Bar of California. At first, I was a staff and legislative attorney. In 1983, I was employed by the State Bar in its Office of Trial Counsel as a prosecutor of disciplinary cases. When I left the State Bar in 1992, I was the most senior prosecutor of disciplinary cases. Since 1992, I have been in the private practice of law. I specialize in attorney professional responsibility and conduct matters.

3. A few months after I resumed private practice, attorneys began asking me to give them advise on professional responsibility matters. Mr. Garen is one of them. He has called for advise on a couple of occasions. One of the calls was a question on a close conflict of interest issue. Another was a question on unsettled advertising issues.

4. Both of the questions indicated to me that Mr. Garen was taking his ethical duties seriously. He recognized the wisdom of seeking expert advise when attempting to act in an uncertain area, and he was willing to pay for the privilege. The nature of his questions indicated to me that he was asking serious questions, rather than looking for loopholes. He clearly wanted to stay on the correct side of

the line, not see how far he could push it.

5. Mr. Garen has asked me to comment on the November 3, 1994 letter from the California State Bar Office of Intake. There is no inference to be drawn from the fact that there are seven of them. California actively publicizes the right to complain against attorneys. Active litigators will attract a lot also.

6. Luporini 93-0-10889. From the description of the conduct, it appears that the prosecutor and Mr. Garen disagree whether his communication with a represented party was "otherwise authorized by law" and therefore valid under Rule 2-100(c)(3). Warning letters are sometimes used to flag minor misconduct, sometimes used when the prosecutor feels the conduct is wrong but can't prove it. I suspect the latter applies here.

7. Frasso 85-0-11683; Blum and Williams 85-0-13379; SBI85-0-14232; Burkhart 86-0-12413. The description and disposition indicates the absence of any ethics issue.

8. State Bar Investigation 89-0-12466. The description raises issues that straddled the ethics/malpractice gray area. However, in the absence of a client complaint, the State Bar has no more right than anyone to inquire into what occurred in the client-attorney relationship. Thus, the non-disciplinary "Admonition."

9. Pierce 92-0-12499. In California, the ethics responsibility for associates requires more than the mere act or omission of an associate. There must be either notice or a protracted lack of supervision.

The difference between a warning letter (see #6 above) and an admonition is that an admonition can be set aside by the subject attorney. However neither are disciplinary results.

10. As a disciplinary prosecutor for nine years, and a specialist in attorney professional responsibility for two and a half years since, I am qualified to render an opinion on the "moral character and willingness of the attorney to abide by the high ethical standards required of attorneys" and to formulate a professional opinion as to whether an attorney will "obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the Court."

11. Mr. Garen is now in his twenty-fourth year in the practice of law in California. The State Bar history of Mr. Garen discloses no imposition of discipline by the State Bar of California. The State Bar history of Mr. Garen discloses that no complaint has ever been filed by a client.

12. In my knowledge, throughout his twenty-four years of the practice of law, Mr. Garen has always demonstrated good moral character. He has always abided by the high ethical standards required of attorneys. He has never obstructed the administration of justice or otherwise acted unscrupulously in his capacity as an officer of the Court.

13. Mr. Garen regularly practices in debt collection, which is an area of practice that ordinarily generates more complaints.

14. Based upon the foregoing, it is my professional opinion that Mr. Garen is "of good moral character and willing to and in fact does abide by the high ethical standards required of attorneys." In addition, it is my professional

opinion that Mr. Garen has not and will not "obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the Court."

15. Finally I have reviewed the report of the Committee on Moral Character and Fitness that was furnished to Mr. Garen. In my professional opinion the factual findings of the Committee do not support the conclusion that Mr. Garen has failed to demonstrate that he is not of good moral character and not willing and able to abide by the high ethical standards required of attorneys.

16. The above facts are stated on my personal knowledge. If called and sworn as a witness, I would so testify as to each fact.

I declare under penalty of perjury of the laws of the States of California and Nevada that the foregoing is true and correct, and that this declaration was executed on January 20, 1995, at San Francisco, California.

/s/ JEROME FISHKIN
JEROME FISHKIN
Attorney at Law
One Sansome Street - #2000
San Francisco, CA 94104
415/951-4712

JF/ng

DECLARATION OF JIM FITZPATRICK
REGARDING CLARK GAREN

In July 1975 my wife Mary and I purchased a very small Collection Agency in Inglewood, California in fact I was the only employee. Shortly there after I started interviewing Attorneys to represent our little company. A friend recommended CLARK GAREN whom I interviewed and hired. It is hard to believe that in our twenty years in the collection industry growing to a multi-office company with over 180 employees that we have never lost any of the many frivolous suits filed against us and our company.

Over the past twenty years I have personal knowledge of at least a hundred instances where Clark has come to the rescue of an individual with major legal problems. One such case I feel comfortable in relating was an Alcoholic who had accumulated five DUI convictions. Upon his arrest for the sixth such offense Clark agreed to represent him. Clark promised to do everything possible to beat jail time in exchange for a promise that there would be no more such offenses. He was able to get it pleaded down to reckless driving and his fee was the promise of no more. It has been 19 years and I credit Clarks sincere concern for our welfare and the requirement of the promise as fee that has kept me out of the drunk tank.

He has and is handling legal problems for individuals that are stuck between a rock and a hard place. In addition to handling their legal problem he works with them to improve their personal situation thus contributing to their mental well being. In many of these instances his only fee other than a thank you card or a tear has been his personal satisfaction knowing that he has made a real difference in their life.

Clark Garen is the most honest, moral person I have ever had the privilege of knowing and this is why our business and personal relationship has stood the test of time. His approach to any problem is determining what is right, if we made a mistake he insists that we immediately make it right thus defusing the situation. If we are right he fights our battles as if they were his own giving us advise in the process to keep the situation from repeating itself.

I can assure you that no client or former client has a complaint as to his representation of them or his integrity. He has refused to continue representing clients who refuse to operate their business in an honest and ethical manor. There is no question that Mr. Garen is different than the persona held by the legal profession. He is respected by both his current and former clients and his peers who have not had the misfortune to have his intervention when they violated their obligation to their clients.

We opened our Las Vegas office over four years ago and it was necessary for us to interview and hire an attorney. We quickly became disenchanted as our first interview ended rather abruptly when the Attorney explained to us that we will be double billed. We pay the lower fee and we submit the higher billing to the court for a larger attorney fee order.

One of the legal firms represented us required $291.75 filing and service fees which we paid in July 1993. We were unable to get a report of progress even though we advised the attorneys office that our client was insistent that we keep them advised. Our calls were not returned by OUR ATTORNEY. On 10/8/93 we were advised case filed & out for service (to date we still have not received verification of either filing or service). By November 8, 1993 our client was irate and sent us a cancellation request and a written request for a report on the case which

we forwarded to OUR ATTORNEY. Instead of a report we received a lien filed for $1250.00, at that time we also discovered that OUR ATTORNEY had filed the case in our clients name and not ours...Our client then was charged $400.00 by OUR ATTORNEY to get their file back.

We had a third bad experience then I asked Mr. Garen if he would see about getting licensed in Nevada. Now it appears that the screening committee is working overtime looking for ways to screen out applicants. I would not have asked Clark to apply if we had seen the honesty and integrity and HIGH MORAL principals that he has us so use to expecting.

I appreciate your review of this travesty as I really do need a legal advisor in Nevada who is responsive to his client, completes tasks timely and is a major asset in achieving our legal goals. HELP PLEASE...

The above facts are stated on my personal knowledge. I called and sworn as a witness, I would so testify as to each fact.

I declare under penalty of perjury of the laws of the State of California and Nevada that the foregoing is true and correct, and that this declaration was executed on February 2, 1995, at Riverside, California.

/s/ JAMES B. FITZPATRICK
JIM FITZPATRICK
Chairman of the Board
J.J. Mac Intyre Company
1212 So. Casino Center Blvd.
Las Vegas, Nevada 89104
(702) 598-4460

THANK YOU,
J.J. MAC INTYRE CO.
Jim Fitzpatrick
Chairman of the Board

DECLARATION OF KATHY HODGKIN

I, KATHY HODGKIN, state and declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I have practiced law in the State of California for four years. Since February of 1994, I have been employed as an associate in Mr. Garen's law office, The Law Offices of Clark Garen.

2. The facts stated herein are of my own personal knowledge and if duly called upon in Court to testify, I could and would testify thereto.

3. Upon graduating from law school, I practiced law for one and a half years in a large law firm. Based on my experience, it is my opinion that large law firms sometimes engage in clouding the issues and delay tactics to promote the interests of their clients. I have found it refreshing to work for Mr. Garen because he is straightforward and ethical in his practice of law. Mr. Garen informed me when I first came to work for him, and it has proved to be the case, that he believes the law is clear on most issues and that he does not engage in litigation that is either unnecessary or unsupported by the laws.

4. The following case is illustrative of the manner in which Mr. Garen practices law. In October of 1993, Bruce Hubbard, M.D., assigned an account to Mr. Garen's client, J.J. Mac Intyre Co. for collection. The account was based on expert witness services rendered by Dr. Hubbard for a law firm, Gittler, Wexler & Bradford, including an evaluation of a patient in connection with a personal injury claim. After receiving letters from Mr. Gittler of that firm disputing the balance owed, I brought the account to Mr. Garen's attention. Mr. Garen

personally reviewed the account and spoke with Mr. Gittler regarding the account. Mr. Garen then sent a letter to Dr. Hubbard stating that it was Mr. Garen's understanding that Dr. Hubbard evaluated the records and examined but did not treat the plaintiff, that Dr. Hubbard was paid over $4,000 for these services by the plaintiff, and that Dr. Hubbard was never called as a witness at trial and never even went to the courthouse, although he was on reserve call. Mr. Garen stated that after reviewing all the facts and circumstances, it was his recommendation that Dr. Hubbard write off the balance of this account. Mr. Garen stated that as an attorney himself, he agreed with Mr. Gittler that a $4,000 fee for an evaluation and examination not including treatment of the patient is difficult to justify. Mr. Garen stated that if there were any other facts Dr. Hubbard wished to bring to his attention, he would be happy to evaluate the claim further, but that at this time he was recommending that no further action be taken on the claim. In response, Dr. Hubbard sent a letter to Mr. Garen thanking him for the letter and agreeing with him that it would not be cost effective to pursue any more collection efforts with respect to the account. Dr. Hubbard also enclosed a contract which he had created for future services and stated that he would greatly appreciate Mr. Garen's feedback towards any changes to the contract that might be made in order to make J.J. Mac Intyre Co.'s work easier in the future. (a copy of the letter is attached hereto). Mr. Garen also sent a copy of his letter to Dr. Hubbard to Mr. Gittler. In response, Mr. Gittler sent a christmas card to Mr. Garen stating that he had received a copy of Mr. Garen's letter, and that he wanted to "express my appreciation for what is becoming increasingly rare in our profession - integrity." (a copy of the letter is attached hereto).

5. I have on many occasions seen Mr. Garen give freely and generously of his time to assist persons with legal matters with no expectation of and no receipt of any compensation. For instance, an employee of J.J. Mac Intyre was sued on a personal injury claim and he came to Mr. Garen for assistance. The claim was a personal matter and unrelated to J.J. Mac Intyre Co. I also spoke with this individual and he had very little, if anything, understanding of the legal process. Mr. Garen spent hours assisting this individual in defending the case, including giving legal advice, and preparing legal documents, including discovery responses. Mr. Garen gave free legal assistance to this individual who otherwise would have been unrepresented by counsel in the case. Mr. Garen never expected to receive and never received any compensation for this assistance.

6. Based on my experience with Mr. Garen, it is my opinion that Mr. Garen is "of good moral character and willing to and in fact does abide by the high ethical standards required of attorneys," and that Mr. Garen will not "obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court." It is my opinion that there should be more attorneys like Mr. Garen and that admitting Mr. Garen to practice law in the State of Nevada would be a benefit to the people of the State of Nevada.

I DECLARE UNDER THE PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED 2-2-95 AT RIVERSIDE, CALIFORNIA.

/s/ KATHY HODGKIN,
KATHY HODGKIN, DECLARANT

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No._____

CLARK GAREN,

Petitioner.

_____/

DECLARATION OF ERIC DERENG

I, ERIC DERENG, state and declare:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I have known CLARK GAREN for approximately 3 years. I met him while I was an owner of Stateline Electronics, a company that installed satellite systems in Lake Tahoe.

4. Mr. Garen entered into a contract with my firm to install a satellite dish at his home in South Lake Tahoe, California. While I was installing the satellite dish, I found out that Mr. Garen was an attorney in California and I asked him some questions about a lawsuit I had just been served with. My former divorce attorney in California had just served me with a lawsuit he had filed in Orange County, California for over $5,000.00 of attorney fees I did not owe him. I started to explain the case to Mr. Garen and he told me to return later that night with all of my papers.

5. When I returned with the papers to his house in South Lake Tahoe, California, I completely explained the case to Mr. Garen. Mr. Garen advised me that in his opinion I did not owe anything to the former attorney because the former attorney had engaged in activity that was unethical, unprofessional, and that constituted a breach of our written agreement. Mr. Garen

also advised me that the attorney's complaint had been filed beyond the statute of limitations. Mr. Garen then spent three hours on his computer preparing papers in the case, and he gave them to me to file with the Court. Although I offered to pay Mr. Garen, Mr. Garen refused any form of payment. Mr. Garen advised me that he believed it was his ethical responsibility to his profession to defend a client wrongly sued in this manner by an fellow attorney. Mr. Garen also advised me the thought that the attorney might abandon his case when he read the papers Mr. Garen had prepared.

6. Unfortunately, the attorney did not abandon the case, but instead set a trial date. Mr. Garen flew me from Lake Tahoe to Orange County, California in his private airplane, obtained a motel room by the Court, and appeared in Court the next day with me. When my former attorney saw that we had appeared, he accepted Mr. Garen's offer for mutual dismissals with each side to bear their own costs and attorney fees. Had I not been represented by Mr. Garen, I would have been unable to defend myself and I would have paid my former attorney over $5,000.00 I did not owe him and that I, as a single parent, could not afford to pay him.

7. Mr. Garen never allowed me to pay him anything, either for his fees or his costs. He did not even let me pay him for the gas he put in his airplane. The only thing I was allowed to pay for were our motel rooms, and the only reason I was able to pay for them is that I went into the motel office and checked out before Mr. Garen could get there to do it himself.

8. Based on this and other experiences I have had with Mr. Garen, it is my opinion that Mr. Garen "demonstrates that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys". Based on this and other experiences I have had with Mr. Garen, it is my opinion that Mr. Garen will not obstruct the administration of justice or otherwise act unscrupulously in his capacity

as an officer of the court".

9. I am now a resident of the State of Nevada, and have an electronics repair business located in Carson City, Nevada. I have read the report on Mr. Garen prepared by the Committee on Moral Character and Fitness of the State Bar of Nevada. As a resident of the State of Nevada, it is my opinion that the factual findings of the committee do not support its conclusion about Mr. Garen. As a resident of the State of Nevada, it is my opinion that there is something seriously wrong with any ethical requirements of this Court that would preclude Mr. Garen from being admitted to practice law in Nevada.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON JANUARY 21, 1995 AT SOUTH LAKE TAHOE, CALIFORNIA

/s/ ERIC DERENG
ERIC DERENG, DECLARANT

LAW OFFICE
OF
GARY K. HAHNE
218 Main Street
P. O. Box 3114, Humble, Texas 77147

PHONE: 713/446/7171, FAX: 713/446-5918

GERALD A. PARE,
ASSOCIATE

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No. 26595

CLARK GAREN,

Petitioner.

/

DECLARATION OF GARY K. HAHNE, ATTORNEY AT LAW IN SUPPORT OF APPEAL OF FINDING BY STATE BAR OF NEVADA THAT PETITIONER DOES NOT MEET REQUIREMENTS OF S.C.R. 51(4)

STATE OF TEXAS)
) S.S.
COUNTY OF HARRIS)

I, GARY K. HAHNE, STATE AND DECLARE:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I have known your Petitioner, CLARK GAREN, in a professional capacity for many years.

4. Your Petitioner brought me in as co-counsel on a personal injury case. Your Petitioner had taken the case because the former attorney, who was a very close friend of Mr. Garen, had passed away, and the widow asked your Petitioner to substitute in on the case. Your Petitioner conducted discovery, but he did not believe that he was sufficiently familiar with Texas Procedure Rules to conduct a trial by himself on a case as complicated as this case was, so he brought me into the case as co-counsel. At all times during our association, your Petitioner approached things above board and followed the rules of ethics. He was totally honest and forthright in communicating with co-counsel and opposing parties. He was zealous in representing our client and always told everyone to tell the truth. He did not advise or condone any activities not of the highest standards expected of attorneys. The case was eventually settled for around $500,000.00.

5. Last year I retained your Petitioner to represent me personally on a matter that was pending in California. I was under the belief that I needed to retain and pay for legal representation in California, but Your Petitioner, though his expertise, explained another legal procedure that allowed me to proceed on the matter in Texas without having to retain or incur legal fees in California.

6. In all of our dealings, Your Petitioner has thoroughly researched the law and been fully prepared. In all of our dealings, Your Petitioner has never acted in an unethical or improper manner, either with a client, a witness, an opposing party, or opposing counsel.

7. Based upon my many years of personal and professional dealings with Your Petitioner, I an of the opinion that your Petitioner is of good moral character and is willing and able to abide by the high ethical standards required of

attorneys because he has been doing so for all of his 24 years of the practice of law.

8. Based upon my many years of personal and professional dealings with Your Petitioner, I an of the opinion that Mr. Garen will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the Court. because he has never done so in any of his 24 years in the practice of law.

DATED: February 1, 1995

/s/ GARY K. HAHNE

GARY K. HAHNE

STATE OF TEXAS)
) S.S.
COUNTY OF HARRIS)

On February 1, 19905, before me, the undersigned, a Notary Public in and for said state and county, personally appeared GARY K. HAHNE, who, after being duly sworn, stated that he executed the foregoing DECLARATION OF GARY K. HAHNE, ATTORNEY AT LAW, IN SUPPORT OF APPEAL OF FINDING BY STATE BAR OF NEVADA THAT PETITIONER DOES NOT MEET REQUIREMENTS OF S.C.R. 51(4).

(SEAL)

/s/ CORNELIA F. SYLVAN
CORNELIA F. SYLVAN,
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

BEFORE THE STATE BAR OF NEVADA

IN THE MATTER OF:	)	
	)	DECLARATION
	)	OF JOSEPH
	)	WALSH
CLARK GAREN, APPLICANT	)	IN SUPPORT OF
	)	PETITION FOR
	)	WAIVER OF
	)	S.C.R. 51(3)
	)	

I, JOSEPH WALSH, STATE AND DECLARE:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I am a graduate of an A.B.A. law school (University of California at Berkeley - Boalt Hall) and Master of Laws (Tax) program (New York University); have been a practicing attorney for _____ years; and I have been a full-time instructor or administrator of A.B.A. approved legal education programs for _____ years. I was the Dean of the Department of Tax during Mr. Garen's residence at Golden Gate University, San Francisco, California. Both Golden Gate University and the Master of Laws (Tax) program at Golden Gate University are fully accredited by the American Bar Association.

4. The American Bar Association has only approved a little over [illegible] Master of Law degree programs in the United States. There are only three ABA approved Master of Law degree programs on the West Coast. A Master of Law degree in an ABA approved program is awarded in a particular specialty, such as tax, intellectual property, or environmental law. Most of the Master of Law programs are in tax.

5. A pre-requisite for admission to our Master of Law program is that the applicant have obtained a Bachelor of Laws or equivalent degree from a law school accredited by the American Bar Association, or that the applicant demonstrate to our admissions committee that the applicant obtained a Bachelor of Laws or equivalent degree in a law school that offers the functional equivalent to the education received at schools accredited by the American Bar Association. Customarily, an applicant from a law school not accredited by the American Bar Association makes this showing by attain admission to practice before the highest Court of any state and actually engage in the practice of law. We admitted Mr. Garen to our program because, in our professional judgment as legal educators, Mr. Garen had obtained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

6. In my professional opinion, a student cannot successfully complete the Golden Gate University Master of Laws (Tax) program without having attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association. In my professional opinion, any student who had failed to attain a Bachelor of Laws or equivalent degree at a law school offering the fundamental equivalent to the education received at schools accredited by the American Bar Association would be unable to successfully complete our Master of Laws (Tax) program.

7. Your applicant, CLARK GAREN, is personally known to me. I have personally observed your applicant, Clark Garen, as a student in the Master of Laws (Tax) program I administer. Mr. Garen actually enrolled in two classes taught by me personally; Partnership Tax and Tax Timing. By virtue of my education,

experience, and observation of Mr. Garen in six units of tax classes personally taught by me, I am qualified to render an expert opinion on the nature and character of Mr. Garen's prior legal education.

8. Mr. Garen successfully completed the Golden Gate University Master of Law (Tax) program, and attained a substantially higher than average grade point average. In fact, Mr. Garen received no grade less than a "B", and Mr. Garen received several grades of "A". This was a particularly difficult achievement for Mr. Garen because he had no prior accounting or tax background, and successfully completed very difficult and complex tax courses such as Partnerships and Employee Retirement Income Security Act (E.R.I.S.A.) classes with a grade of B. Mr. Garen could have never achieved this level of performance if he had not attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON FEBRUARY _____, 1994 AT SAN FRANCISCO, CALIFORNIA.

/s/ JOSEPH WALSH
JOSEPH WALSH, DECLARANT

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No._____

CLARK GAREN,

Petitioner.

_____/

DECLARATION OF FRANK ROESCH

I, FRANK ROESCH, STATE AND DECLARE:

1. If duly called as a witness and sworn to give testimony in this matter, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I am a graduate of the University of California at Berkeley and Hastings School of Law in San Francisco. I was admitted to practice law in California on June 18, 1974, and I have now been practicing law in California for more than twenty years.

4. I first met CLARK GAREN in 1980 during our service on the California Judicial Council Advisory Committee on Court Forms. The Committee had received a legislative assignment to overhaul or create the forms for pre-judgment attachments; enforcement of judgment; and form complaints. The Court sought to select one attorney to serve on the Committee that had a creditors practice and an attorney to serve on the Committee that had a legal aid background. Mr. Garen was the attorney selected with a creditors practice, and I was the attorney selected with the legal aid background.

5. Among other things, Mr. Garen made an impression on me because he declined to request reimbursement for his expenses in attending the meetings. The Judicial Council reimbursed members for travel, hotel, and meal expense, and Mr. Garen definitely incurred these expenses

because the meetings were all in San Francisco while Mr. Garen resided in Los Angeles, he never sought reimbursement. Although there were many other attorneys on the panel, I believe Mr. Garen was the only one who refused all reimbursements of his expenses. This is an indication that he felt morally obligated to render service to the profession and the judicial system without any personal reward, including reimbursement of expenses.

6. During our period of service, the Committee created the attachment forms, enforcement of judgment forms, the form complaints and numerous other pleading forms that are still in use today. Mr. Garen and I worked very closely on these forms; and at all times in their formulation, I found him to be prepared, knowledgeable, reasonable, and rational with respect to the issues under discussion. While many committee members quickly joined the majority, I found that Mr. Garen often expressed a point of view not initially shared by others. He often continued to express and advocate his solitary point of view until all the other members understood his position. Sometimes others adopted his position and sometimes he remained the solitary advocate of his position. However, as a fellow member, I always appreciated that Mr. Garen was willing to express and maintain a position, regardless of its popularity. His positions whether in the majority or when he was the sole advocate of a position were always well thought out, reasoned, and based on an objective application of the facts under consideration.

7. During and after our service on the committee, Mr. Garen and I have continued to maintain professional contact with each other. I have occasionally referred clients to Mr. Garen for assistance in his area of expertise. I have also occasionally worked together with Mr. Garen on cases, sometimes sharing the same side and sometimes on opposing side. I have always found Mr. Garen to be direct honest,

ethical, and forthright. At all times during my association of over 15 years with Mr. Garen, Mr. Garen has always "demonstrated that he is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law."

8. Based upon my association of over 20 years with Mr. Garen, it is my personal opinion that Mr. Garen is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law, and I unequivocally recommend that the state of Nevada license him as an attorney.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON 17TH DAY OF APRIL, 1995 AT UNION CITY, CALIFORNIA

/s/ FRANK ROESCH

FRANK ROESCH, DECLARANT

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No. 26595

CLARK GAREN,

Petitioner.

_____/

DECLARATION OF SCOTT MIDDLETON HALL

I, SCOTT MIDDLETON HALL, state and declare:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I have known CLARK GAREN for approximately 7 years. I have had the good fortune of working with Mr. Garen on several levels.

4. Upon graduation from law school in 1988, I obtained my first job as a lawyer working for Mr. Garen. Mr. Garen showed great patience in training me in the practice of law. Me impressed upon me that nothing but the highest moral and ethical conduct would be tolerated in his firm, and those who were employed by it.

5. Upon leaving Mr. Garen's employment, I became the owner and President of a small California corporation. I consider myself very fortunate that Mr. Garen consented to represent my corporation, as well as myself personally, in a legal capacity. As a client, I have found Mr. Garen's services to be of the highest quality.

6. Lastly, I continue to practice law on a part-time basis. I have had occasion to refer clients to Mr. Garen and associate him on cases I was handling. I find his knowledge of the law and dedication to the best interests of his clients to be of the highest level.

7. In my opinion, the best recommendation that can be made for an individual is to continue to transact business and place trust in the individual. In my opinion, the best recommendation that can be made for an individual attorney is that his former employees desire to use his services. Obviously, I have, by conduct, given Mr. Garen the best recommendation I have to give.

8. Based on my experience as an employee, client, and associate of Mr. Garen, it is my opinion that Mr. Garen "demonstrates that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys". It is also my opinion that Mr. Garen will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court".

9. As a licensed attorney, I have reviewed the Findings of Fact of the Committee on Moral Character and Fitness of the State Bar of Nevada. As a licensed attorney, it is my professional opinion that, as a matter of law, the findings to not support the legal conclusions of the Committee.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON FEBRUARY 3, 1995 AT RIVERSIDE, CALIFORNIA

/s/ SCOTT MIDDLETON HALL
SCOTT MIDDLETON HALL, DECLARANT

July 12, 1994

State Bar of Nevada
Committee on Character and Fitness
Ms. Deena R. Trueblood
Assistant Director of Admissions
201 Las Vegas Boulevard South, Suite 200
Las Vegas, Nevada 89101

RE: Clark Garen - Hearing Date: 8-19-94

Dear Ms. Trueblood:

It gives me great pleasure to recommend a man of great mind and honorable character to the State Bar of Nevada. I have known attorney Garen both professionally and personally for the last 24 years. My first meeting with him as through my professional relationship with his father, Bernard Garen, the late Deputy Superintendent of Schools in Torrance, California.

Mr. Clark Garen is known for his outstanding gifts as a counselor, mediator, domestic and real estate attorney, and tax expert. My friends, my patients and I have appreciated the brilliance and integrity in which he has conducted all his professional relationships.

I am a resident of Cypress, California; hold a Doctorate in Psychoanalysis; and conduct a private practice in Long Beach, California. I am internationally known as a clinician, lecturer, university teacher and writer.

Since Mr. Garen moved to Nevada, it has been necessary for me to consult with him on California and Federal legal tax matters on numerous occasions.

Mr. Clark Garen is an outstanding human being. He has wonderful character. I am sure he will conduct his legal and professional dealings in Nevada in the full letter and intent of the law.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 11, 1994 in Long Beach, California.

Sincerely,

/s/ VIRGINIA D. HUNTER

Virginia D. Hunter, PhD.

VDH:pw
cc: Clark Garen

THE STATE BAR OF NEVADA

BEFORE THE COMMITTEE ON MORAL CHARACTER AND FITNESS

IN THE MATTER OF CLARK GAREN

DATE OF HEARING: AUGUST 19, 1994

DECLARATION OF JON P. THORNBURGH

1. All of the facts stated herein are within my own, personal knowledge.

2. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

3. I am an attorney admitted to practice law before the Supreme Courts of California, Arizona, and Nevada. I was first admitted to practice law before the Supreme Court of California. After my admission to practice law in California, I became an associate attorney with Garen and Garen, Attorneys at Law, and then after Bernard Garen (Clark Garen's father) passed away, an associate attorney with the Law Offices of Clark Garen. As an associate, I have had full use of all office facilities; full access to office keys and security codes; and a listing on the firm letterheads. Sometimes I had a private office primarily for my own use; sometimes I had a space assigned for me to work; and sometimes space would be made available for me on an as needed basis, depending upon the level of my activity with the firm at any particular time.

4. On March 9, 1994, I appeared before the State Bar of Nevada, Committee on Functional Equivalency to give testimony of my opinion with respect to whether Clark Garen had attained the functional equivalent of an A.B.A. education. As an attorney, I was particularly concerned that any statements I made at the hearing were completely truthful and factually consistent.

Accordingly, I misunderstood the intent and purpose of some of the questions asked by the committee and my answers, although true in and of themselves, are being incorrectly used by the Committee on Functional Equivalence to support findings which are not true.

5. For example, the Committee on Functional Equivalence asked me if I had an office with Mr. Garen in Nevada, and to this question I replied "No." Unfortunately, I misunderstood this question to be did I have a private office dedicated to my own, private use at Mr. Garen's Las Vegas office, and this answer is true because I have no such office. The reason I misunderstood this question is that the purpose of my presence was to testify respecting my opinion as to whether Mr. Garen had achieved the functional equivalent of an A.B.A. education, and, of course, my observation of Mr. Garen was essential to support such an opinion. I assumed the purpose of this question was to validate my opinion through observation, and in an effort to be totally truthful with the Committee on Functional Equivalence, I replied no because my primary observation of Mr. Garen occurred many years ago in Torrance, California, as I testified.

6. My arrangement with Mr. Garen's Las Vegas office is that space will be made available for me on an as needed basis; telephone calls for me will be answered and messages forwarded to me; and mail will be forwarded to me. Anytime I would make a Nevada Court appearance, I would designate Mr. Garen's office as my address of record, and my name is properly included on Mr. Garen's letterhead. Accordingly, my prior testimony incorrectly gave the impression that I had no place of business at Mr. Garen's Las Vegas office, and insofar as my testimony gave this impression, the testimony was incorrect. I intended my testimony to be that I did not have a private office at which I regularly worked in Las Vegas which would have formed a basis for my opinion regarding Mr.

Garen's legal education, not that I had no place of business at Mr. Garen's Las Vegas office.

7. Likewise, I am distressed by the following finding from Paragraph 6 of the Report of the Committee on Functional Equivalence:

"...Petitioner testified that any law that was practiced out of the Nevada office was conducted in concert with Mr. Thornburgh, a licensed Nevada attorney. When questioned, Mr. Thornburgh testified that he never worked as an attorney in Nevada and never worked in the Nevada office."

This finding does not accurately reflect the testimony given to the committee by myself and by Mr. Garen. I was most distressed about this finding because it indicated possible wrongdoing on my part and so I carefully questioned Mr. Garen about it. In response to my questions, Mr. Garen stated that his testimony was that he practiced law for clients residing in California and Texas clients pertaining to litigation pending in California and Texas from his office in Las Vegas, Nevada. Mr. Garen stated that he did not testify before the committee that such law was "conducted in concert" with me, and it was not in fact "conducted in concert" with me. I had nothing to do with Mr. Garen's representation of clients residing in California and Texas pertaining to matters in those states. Mr. Garen further advised me that he advised the committee that while he knew it was unusual for clients in one state to follow an attorney to another state for representation in their home state, Mr. Garen stated that he had many such clients. I am personally aware that this is true.

8. Mr. Garen also stated he testified that any Nevada residents or clients requiring representation for Nevada litigation or legal work were referred to me, and that he did not perform such matters himself because he was not licensed to practice law in Nevada. Mr. Garen

certainly never represented to any Nevada resident or client "in concert with" me. Mr. Garen did refer some Nevada residents or clients requiring representation for Nevada litigation or legal work to me, and I declined those matters on behalf of the firm due to scheduling problems. While I have no personal knowledge as to what Mr. Garen may have told individual clients, I have no knowledge, personal or heresay, of any instance where Mr. Garen represented any Nevada resident or client in connection with Nevada litigation or legal work. In addition, my personal opinion is that Mr. Garen has never represented any Nevada resident or client in connection with Nevada litigation or legal work. This opinion is based in part on my personal knowledge of Mr. Garen and his ethics and in part based on my personal knowledge of the cases referred to me that I have declined for the firm and referred to independent counsel.

9. The firm letterheads are consistent with Section 7.5(b) of the ABA Model Rules and ABA Code DR 2-102(D), which have been adopted by Nevada. These provisions permit interstate law firms to list firm members who are not licensed to practice in a particular state on the letterhead. The example given by the ABA Model Code states "Ruben Diaz (admitted in New York Only)". The firm letterheads were approved by me because they were in compliance with this provision of the ABA Model Code and Model Rules. I do not agree with the finding of the Committee on Functional Equivalence that the letterhead was deceptive or would lead a reader to believe that Mr. Garen was licensed to practice law in Nevada. In addition, I know of no instance where anyone was deceived by the firm letterhead.

10. I have known Mr. Garen since 1975. As I testified before the State Bar of Nevada, Committee on Functional Equivalence, I have known Mr. Garen in many different capacities. I taught Mr. Garen how to fly airplanes and

taught him to attain a Private Pilot License with an Instrument Rating, and I have periodically given him refresher flight instruction and reviews. Mr. Garen tutored me in passing the California Bar Examination and has consistently taught me law during the entire period of our association. I have functioned as an Associate Attorney for Mr. Garen, and I have been a client of Mr. Garen. During the many facets of our relationship over 19 years, I have had many different opportunities to observe Mr. Garen's conduct of his business and personal affairs, and I have acquired ample data upon which to formulate an opinion respecting the personal and business ethics and integrity of Mr. Garen and Mr. Garen's character and fitness to practice law. In my opinion, Mr. Garen's personal and business ethics and integrity are beyond reproach, and Mr. Garen's character and fitness justify his admission to practice law in Nevada.

11. I am unable to attend this hearing personally because I am scheduled to be on a trip for Delta Airlines on this date. The Committee on Functional Equivalence was correct in finding that I am a full-time pilot for Delta Airlines, and, as such, my availability is limited. However, as stated above, If duly called and sworn as a witness, my testimony would be as hereinabove stated.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON JULY _____, 1994 AT TORRANCE, CALIFORNIA

/s/ JON P. THORNBURGH,
JON P. THORNBURGH,
DECLARANT

BEFORE THE STATE BAR OF NEVADA

IN THE MATTER OF:	)	
	)	DECLARATION
	)	OF GARRETT C.
	)	DAILEY
CLARK GAREN, APPLICANT	)	IN SUPPORT OF
	)	PETITION FOR
	)	WAIVER OF
	)	S.C.R. 51(3)
	)	

I, GARRETT C. DAILEY, STATE AND DECLARE:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I am a graduate of an A.B.A. Law School (University of California at Davis); I have been a practicing attorney for _____ years; and I have been an instructor for A.B.A. approved legal education programs for _____ years, first at the University of California at Davis and later at Golden Gate University. Both Golden Gate University and the Master of Laws (Tax) program at Golden Gate University are fully accredited by the American Bar Association.

4. A pre-requisite for admission to our Master of Law program is that the applicant have obtained a Bachelor of Laws or equivalent degree from a law school accredited by the American Bar Association, or that the applicant demonstrate to our admissions committee that the applicant obtained a Bachelor of Laws or equivalent degree in a law school that offers the functional equivalent to the education received at schools accredited by the American Bar Association. Customarily, an applicant from a law school not accredited by the American Bar Association makes this showing by attain admission to practice before the highest Court of any state and actually engage in the practice of law. We admitted Mr. Garen to our program because, in our professional judgment as legal educators, Mr. Garen had obtained a Bachelor of Laws or

equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

5. In my professional opinion, a student cannot successfully complete the Golden Gate University Master of Laws (Tax) program without having attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association. In my professional opinion, any student who had failed to attain a Bachelor of Laws or equivalent degree at a law school offering the fundamental equivalent to the education received at schools accredited by the American Bar Association would be unable to successfully complete our Master of Laws (Tax) program.

6. Your applicant, CLARK GAREN, is personally known to me. I have personally observed your applicant, Clark Garen, as a student in the Master of Laws (Tax) subject I teach. By virtue of my education, experience, and observation of Mr. Garen for one semester, I am qualified to render an expert opinion on the nature and character of Mr. Garen's prior legal education.

7. Mr. Garen successfully completed the Golden Gate University Master of Law (Tax) program, and attained a substantially higher than average grade, to wit: a "b". This was a particularly difficult achievement for Mr. Garen because he had no prior accounting or tax background, and successfully completed the very difficult and complex tax course I instruct. Mr. Garen could have never achieved this level of performance if he had not attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON FEBRUARY _____, 1994 AT SAN FRANCISCO, CALIFORNIA.

/s/ GARRETT C. DAILEY
GARRETT C. DAILEY, DECLARANT

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No._____

CLARK GAREN,

Petitioner.

_____/

DECLARATION OF MARY McGEE

I, MARY McGEE, state and declare:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I have known CLARK GAREN personally and professionally for 29 years. I have always found him to be helpful and courteous in all interactions. His influence is positive.

4. In my business transactions I have found Mr. Garen's judgments to be legally sound and always moral and ethical. I have also referred many of my family, friends, and business associates to Mr. Garen, and they have also expressed to me that his judgments were legally sound and always moral and ethical.

5. Based upon my close interaction with Mr. Garen for the preceding 29 years and my knowledge of his interaction with those I have referred to him for assistance, it is my opinion that Mr. Garen "demonstrates that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys". and it is further my opinion that Mr. Garen will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court".

9. I have been a resident of the State of Nevada for several years now, and I now live in the Lake Tahoe area. I have read the report on Mr. Garen prepared by the Committee on Moral Character and Fitness of the State Bar of

Nevada. As a resident of the State of Nevada, it is my opinion that the factual findings of the committee do not support its conclusion about Mr. Garen. As a resident of the State of Nevada, it is my opinion that there is something seriously wrong with any ethical requirements of this Court that would preclude Mr. Garen from being admitted to practice law in Nevada.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON JANUARY 21, 1995 AT SOUTH LAKE TAHOE, CALIFORNIA

/s/ MARY McGEE
MARY McGEE, DECLARANT

BEFORE THE STATE BAR OF NEVADA

IN THE MATTER OF:	)	
	)	DECLARATION OF MARCY KELLY
CLARK GAREN, APPLICANT	)	IN SUPPORT OF PETITION FOR WAIVER OF S.C.R. 51(3)

I, MARCY KELLY, STATE AND DECLARE:

1. If duly called as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

2. All of the facts stated herein are within my own, personal knowledge.

3. I am a graduate of an A.B.A. law school and Master of Laws (Tax) program; have been a practicing attorney for _____ years; and I have been an administrator of A.B.A. approved legal education programs for _____ years. I am the director of the Master of Laws (Tax) program at Golden Gate University, San Francisco, California. Both Golden Gate University and the Master of Laws (Tax) program at Golden Gate University are fully accredited by the American Bar Association.

4. The American Bar Association has only approved a little over 20 Master of Law degree programs in the United States. There are only three ABA approved Master of Law degree programs on the West Coast. A Master of Law degree in an ABA approved program is awarded in a particular specialty, such as tax, intellectual property, or environmental law. Most of the Master of Law programs are in tax.

5. A pre-requisite for admission to our Master of Law program is that the applicant have obtained a Bachelor of Laws or equivalent degree from a law school accredited by the American Bar Association, or that the applicant demonstrate to our admissions committee that the applicant

obtained a Bachelor of Laws or equivalent degree in a law school that offers the functional equivalent to the education received at schools accredited by the American Bar Association. Customarily, an applicant from a law school not accredited by the American Bar Association makes this showing by attain admission to practice before the highest Court of any state and actually engage in the practice of law. We admitted Mr. Garen to our program because, in our professional judgment as legal educators, Mr. Garen had obtained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

6. In my professional opinion, a student cannot successfully complete the Golden Gate University Master of Laws (Tax) program without having attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association. In my professional opinion, any student who had failed to attain a Bachelor of Laws or equivalent degree at a law school offering the fundamental equivalent to the education received at schools accredited by the American Bar Association would be unable to successfully complete our Master of Laws (Tax) program.

7. Your applicant, CLARK GAREN, is personally known to me. I have personally observed your applicant, Clark Garen, as a student in the Master of Laws (Tax) program I administer. By virtue of my education, experience, and observation of Mr. Garen for one year, I am qualified to render an expert opinion on the nature and character of Mr. Garen's prior legal education.

8. Mr. Garen successfully completed the Golden Gate University Master of Law (Tax) program, and attained a substantially higher than average grade point average. In fact, Mr. Garen received no grade less than a "B", and Mr. Garen received several grades of "A". This was

a particularly difficult achievement for Mr. Garen because he had no prior accounting or tax background, and successfully completed very difficult and complex tax courses such as Partnerships and Employee Retirement Income Security Act (E.R.I.S.A.) classes with a grade of B. Mr. Garen could have never achieved this level of performance if he had not attained a Bachelor of Laws or equivalent degree from a law school that offered the functional equivalent to the education received at schools accredited by the American Bar Association.

9. I am personally so impressed with Mr. Garen's qualifications and abilities that I have offered him a part-time teaching position on our Master of Law in Taxation faculty.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON FEBRUARY _____, 1994 AT SAN FRANCISCO, CALIFORNIA.

/s/ MARCY KELLY
MARCY KELLY, DECLARANT

THE STATE BAR OF NEVADA
BEFORE THE COMMITTEE ON
MORAL CHARACTER AND FITNESS

IN THE MATTER OF CLARK GAREN
DATE OF HEARING: AUGUST 19, 1994

DECLARATION OF CLARK GAREN

I, CLARK GAREN, STATE AND DECLARE:

1. All of the facts stated herein are within my own, personal knowledge.

2. If duly sworn as a witness and sworn to give testimony herein, my testimony would be as hereinafter stated.

3. This Declaration is filed in advance of the hearing to enable the members of the committee time to formulate any questions or request additional evidence on the subjects mentioned in this Declaration. This Declaration is offered to supplement oral testimony of the Declarant, not in lieu of oral testimony of the Declarant.

4. I have engaged in the following activities in Nevada which I do not believe constitutes either the practice of law in Nevada or the unauthorized practice of law in Nevada:

a. Consulting in Nevada with California or Texas residents about matters pending in California or Texas.

b. Preparing pleadings in Nevada for filing in the Federal and State Courts of California and Texas on behalf of residents of California or Texas. These activities are authorized by my licenses to practice law in California and in Texas. Neither California or Texas require an attorney maintain an office within the state. In my opinion, these activities do not constitute the practice of law in Nevada or the unauthorized practice of law in Nevada.

5. Whether the performance of the activities described in Paragraph 4 hereinabove in Nevada for Nevada Residents would constitute

the practice of law in Nevada or the unauthorized practice of law in Nevada would depend upon the manner of the initial contact between the attorney and the client. I have represented two Nevada residents in a legal capacity. The two clients are Jim and Mary Fitzpatrick and my next door neighbor, Karen.

6. Jim and Mary Fitzpatrick have been close personal friends and clients since 1975. I was responsible for the Fitzpatrick's moving from California to Nevada in 1989. After they moved to Nevada, I continued to represent them in connection with any legal matters arising in California or Texas. However, I never represented Jim or Mary Fitzpatrick in connection with any Nevada legal matters, nor have I represented their Nevada corporation. (The corporate entities in the other states are not Nevada corporations.) At the hearing before the Committee on Functional Equivalency, Jim Fitzpatrick testified about his employment of five different Nevada attorneys over the past several years. This testimony is offered as further evidence that I have not represented the Fitzpatrick's or their Nevada corporation with reference to Nevada legal matters.

7. My next door neighbor, Karen (I do not remember her last name) was divorced in California. (I did not handle the divorce.) Her ex-husband, who was still working in California, failed to pay the court ordered spousal and child support. The Clark County District Attorney support division was unable to effect collection. I substituted in as attorney of record in the California proceeding, obtained a Writ of Execution and Wage Assignment, and served it on the employer. I was then contacted by the husband's attorney and reached a compromise. Karen continued to receive funds until the husband moved from California, and she has not been paid since.

8. I was contacted by Karen at my home in Las Vegas, which is where I prepared the paperwork for filing in California. I did not

charge Karen any fees for my services, and I even advanced the Court costs (which were under $10.00) without claim for reimbursement.

9. Other than these two instances, I have never performed any work for any other resident of the State of Nevada. Due to the fact that the work I did required a California law license, and that a Nevada licensee would be unable to perform the work I was retained for, I do not believe my services to either of these Nevada residents constituted the practice of law in Nevada.

10. I have never maintained an office in Nevada for the practice of law in Nevada in the normal meaning of the term. I have never had outside or inside signs with my name upon them; I have never purchased any advertising for a Law Office in Nevada; I have never even had a telephone listed in my name, either in the white or yellow pages. All I had was a place to work in my home and later in Jim Fitzpatrick's building. However, after considering Mr. Thornburgh's mis-interpretation of the term "office", I realized that others also misunderstood the nature of my activities in Las Vegas, Nevada. Therefore, the following history is offered to explain how I came to have an office in Las Vegas.

11. After many years of practicing law, I created a computerized tarot card reading line for 976 telephone service. This line succeeded beyond any expectations. It was first launched in Los Angeles, California, and it generated a net income of $38,000 in the first ten days of operation. I expanded the line into other cities, retired from the practice of law, and moved to Las Vegas, Nevada. My primary motivation for moving was to remove my income generated outside of California from California Personal Income Taxation.

12. I purchased a home in Las Vegas, Nevada on October 31, 1987, and I oversaw my various 976 lines from my residence in Las Vegas, Nevada. I had 976 installations in Los Angeles,

California; San Francisco, California; Miami, Florida; New Orleans, Louisiana; Atlanta, Georgia; and New York, New York. There was no 976 business located within Nevada. All I did for the 976 lines was to place advertising orders in December of every year; receive and deposit telephone company checks every month; and to pay bills every month. During this period I also occasionally handled law work for California clients from my Las Vegas home. However, during this period I did very little, if any, law work.

13. I initially had two local telephone numbers installed in my home. One was listed under Tara Communications, Inc. (702) 435-7335; the other was listed under the name of my mother, Ruth Garen (702) 454-3977. None were listed under my name. The (702) 435-7335 number was either answered by me with the word, "hello" or by my answering machine which played my voice stating, "You have reached Tara Communications. I'm sorry but no one is available to answer your call, but if you leave your name, phone number and a brief message, we'll return your call as soon as possible." The (702) 454-3977 number was either answered by me with the word, "hello" or by my answering machine which played my voice stating, "Hi, this is Clark. I'm sorry but I'm not here now, but leave your name and number and I'll get back to you as soon as possible." **At no time were either of these phones answered in a manner to indicate that I was operating a law office!**

14. In 1989, the major long distance carriers introduced interactive 900 service. The advantage of 900 service was that instead of having installations, space, and computers scattered throughout the country, I could have one computer in one place. The additional advantage was that a new city could be added merely for the additional cost of local advertising instead of having to make a capital investment of approximately $50,000. Accordingly, I decided to transfer my 976

programs to 900 service.

15. I was able to obtain installation of my 900 computers in my residence. This required installation of two T-1 lines by the telephone company which provided 48 incoming, active lines to my computers. This installation was effected in June or July, 1989.

16. Having the T-1 lines installed in my residence was expensive because I incurred a monthly mileage charge of approximately $1,000.00 per month. Since the cost of renting an office downtown would have just about equaled the cost of the mileage charges, I elected to install and keep the computers in my home because it would be easier for me to monitor them.

17. I also installed two additional telephone numbers, (702) 456-8887 and (702) 434-3247. These phone numbers were initially directed to the 900 computers to enable remove communications with the computers. After the computers were moved to the Fitzpatrick office, (702) 456-8887 was directed to a Fax machine and the other number was left installed for occasional use by house guests.

18. I had letterheads printed for Tara Communications, Inc., and I do not believe my name appeared on the initial letterheads. The initial letterheads showed "P. O. Box 94498, Las Vegas, Nevada 89193-4498" as the address for Tara and (702) 435-7335 as the telephone number for Tara. For my limited California law work I did not print attorney at law letterheads, I merely re-used old letterheads and used a typewriter to change the address to the Las Vegas post office box and Las Vegas telephone number.

19. During this period, I continued to operate my 900 and 976 service from my residence. My 900 service required the same work as my 976 numbers. I eventually phased out my 976 lines after transferring the customer base to my 900 numbers.

20. In 1989, I convinced my best friends,

Jim and Mary Fitzpatrick, to move to Las Vegas, primarily for tax advantages. Jim and Mary were not as content to be inactive as I was, so they rented space and opened a collection agency. Their initial location was on Fremont Street. I did not have any office at this location.

21. In 1991, Jim Fitzpatrick decided he wanted to purchase a building for his collection agency. I told him that buying a building downtown would enable me to install my 900 computers in the office building, and would save me about $1,000.00 per month. Since Jim also required T-1 access, I explained that purchase of a building downtown would save him a like amount of money. Jim started looking for a building to buy that was downtown.

22. Jim purchased the building at 1212 South Casino Center Blvd., Las Vegas, Nevada 89104. This building was in a zero mileage zone, so Jim gave me an office in the building. I moved my computers, my two T-1 access lines, and some office furniture that had previously been in my house. I also installed two additional local telephone numbers that were connected to the computers. The numbers were installed in the name of Tara Communications, Inc., were unlisted, and were connected directly to the 900 computers. There was no charge for the office; the office was given to me based on friendship. Jim was happy to enable me to save $1,000.00 per month, and giving me the space really did not cost him any money.

23. I was given a telephone from which I could place and receive calls. The telephone number I used was (702) 598-4460 which is listed in the name of J. J. MAC INTYRE CO, the name of Jim's collection agency. The telephone is answered "J. J. MAC INTYRE CO.", and anyone requesting me is transferred to me office if I am in. If I am not in, a message is taken or the caller is referred to where I am or to my (702) 435-7335 phone number. **At no time are these phones answered in a manner to indicate I am operating a law office!**

24. I am always traveling, and there is no place where I can regularly be reached by telephone. My primary telephone number for receiving messages is (702) 435-7335, which is usually answered by an answering machine. I monitor this number several times a day and return calls.

25. Neither my office at my home or my office at J. J. MAC INTYRE CO. was ever open to the public, either as a law office or any other office. This office was a place where I worked on my private business, my 900 business, and on law business of my California and Texas clients. This was not an office open for business or transacting business either with residents of the State of Nevada or non-residents having business in the State of Nevada. There were no signs anywhere on the building indicating that I had an office in this building. As additional evidence, I have attached the following Exhibits which are photographs I personally took of the building on July 29, 1994. These photographs are representative of the building throughout the period it has been occupied by myself, and show the exterior, the lobby, the stairway, and my office.

Exhibit A is the building exterior;
Exhibit B is the building lobby
Exhibit C is the stairway to my upstairs office
Exhibit D is the upstairs hallway to my office
Exhibit E is my office
Exhibit F is my office
Exhibit G is my office

26. Because I have never operated a law office really open to the public, I have always been lax about letterhead. I use letterhead until the supply is exhausted. If the information on the letterhead changes, I use a typewriter to insert the changes until the printed supply is exhausted.

27. In 1993, my letterhead supply ran out. At the time, I was going to school in San

Francisco to obtain a Master of Law and I was seldom in one place. I used to have all correspondence sent to my Las Vegas post office box, but since I now only came into Las Vegas once a month, I made arrangements for J. J. Mac Intyre Co. employees to open and process some of my correspondence. Therefore, letterhead was printed with both the Las Vegas J. J. MAC INTYRE CO. address and phone number and the Orange, California J. J. MAC INTYRE CO. address and phone number. This was to enable recipients of these communications to be advised where to reach me. This letterhead complied with the letterhead rules in Texas and California where I am admitted. In studying for the Nevada Bar Examination, I first learned that Nevada has not adopted the ABA model rule on interstate law firm letterhead, and that the letterhead would violate the Nevada Rules of Professional Conduct by listing a firm partner not licensed to practice in Nevada. However, the Nevada Rules of Professional Conduct would not apply to this letterhead since it was never used in the practice of law in Nevada. This letterhead was only used in the practice of law in California and in Texas, where the letterhead is in compliance. Indeed, the failure to conform these letterheads to the Nevada Rules of Professional Conduct is further evidence that the letterheads were not intended to be used for and were not in fact used for the practice of law in Nevada. Had I intended these letterheads to be used for the practice of law in Nevada, I would have first ascertained what the Nevada rules for letterheads were.

28. I also printed letterhead with the Casino Center address for my advertising agency. This letterhead listed the Tara Communications phone number, which was and is still installed in my house, and the Casino Center Blvd. address. This letterhead was designed primarily for the purchase of advertising. By using letterhead stating that I was an advertising agency, I would receive a 15% in house agency

discount on purchased advertising. This letterhead was also used occasionally to correspondence in connection with my California and Texas law practice, although that was not what this letterhead was designed or primarily printed for. 29. I testified before the Committee on Functional Equivalence that I had not engaged in any practice of law in Nevada, and that any law practice performed by my firm had been performed by Jon P. Thornburgh, a Nevada licensee. This is a true statement.

30. Jon P. Thornburgh testified that he had never practiced any law in Nevada. THESE STATEMENTS ARE **NOT** CONTRADICTORY.

31. I thought the purpose of the hearing was to establish the functional equivalence of my legal education. I had no advance notice that the activities of either myself or Mr. Thornburgh with respect to the practice of law in Nevada would be the subject of examination. Therefore, Mr. Thornburgh and I did not confer on this subject **prior** to my testimony before the committee. Since we had not conferred, my testimony regarding Mr. Thornburgh's activities in Nevada reflected the fact that I did not know at the time what Mr. Thornburgh had actually done in Nevada. I only knew what I personally had done in Nevada - **nothing!**

32. My specific testimony was that I had not performed any legal work in Nevada, and that if any legal work had been performed in Nevada, it had been performed by Mr. Thornburgh. I did not intend to indicate that Mr. Thornburgh had in fact performed any legal work; I intended to indicate that I did not know if Mr. Thornburgh had in fact performed any Nevada legal work. In retrospect, I see why my testimony was misinterpreted.

33. The letterhead forming the basis of this investigation was supplied by me to the Committee on Functional Equivalence as evidence of my work product to show functional equivalence. The members of the Committee on Functional Equivalence seemed to believe that

the letterhead was somehow misleading, even through the letterhead clearly stated that I was "admitted in California and Texas" in accordance with the ABA model codes.

34. I concede that the letterhead **could** have been used in a manner that would be misleading. For example, if I were using the letterhead in a campaign for Nevada public office, such as Justice of the Peace, the letterhead would clearly be misleading. For example, if I were using the letterhead for general mailers to Nevada residents seeking income tax preparation business, the letterheads would clearly be misleading. **MY LETTERHEADS WERE NEVER USED FOR THESE PURPOSES!**

35. My letterheads were sent to OUT-OF-NEVADA ATTORNEYS, courts, and judges concerning OUT-OF-NEVADA legal matters. The recipients of these communications only cared that I was admitted to practice in California or Texas. They did not care whether I was admitted to practice in Nevada. Furthermore, while the lay people described in paragraph 32 might not have understood the implications of the disclaimer, most attorneys, courts, and judges would understand that "admitted to practice in California and Texas" means that I was not admitted to practice in Nevada, especially when Mr. Thornburgh's name was followed by a disclaimer that he was admitted to practice in Nevada.

36. I know of no instance where a recipient of any communication on my letterhead was in fact misled to believe that I was licensed to practice law in Nevada, or that I was practicing any type of law in Nevada.

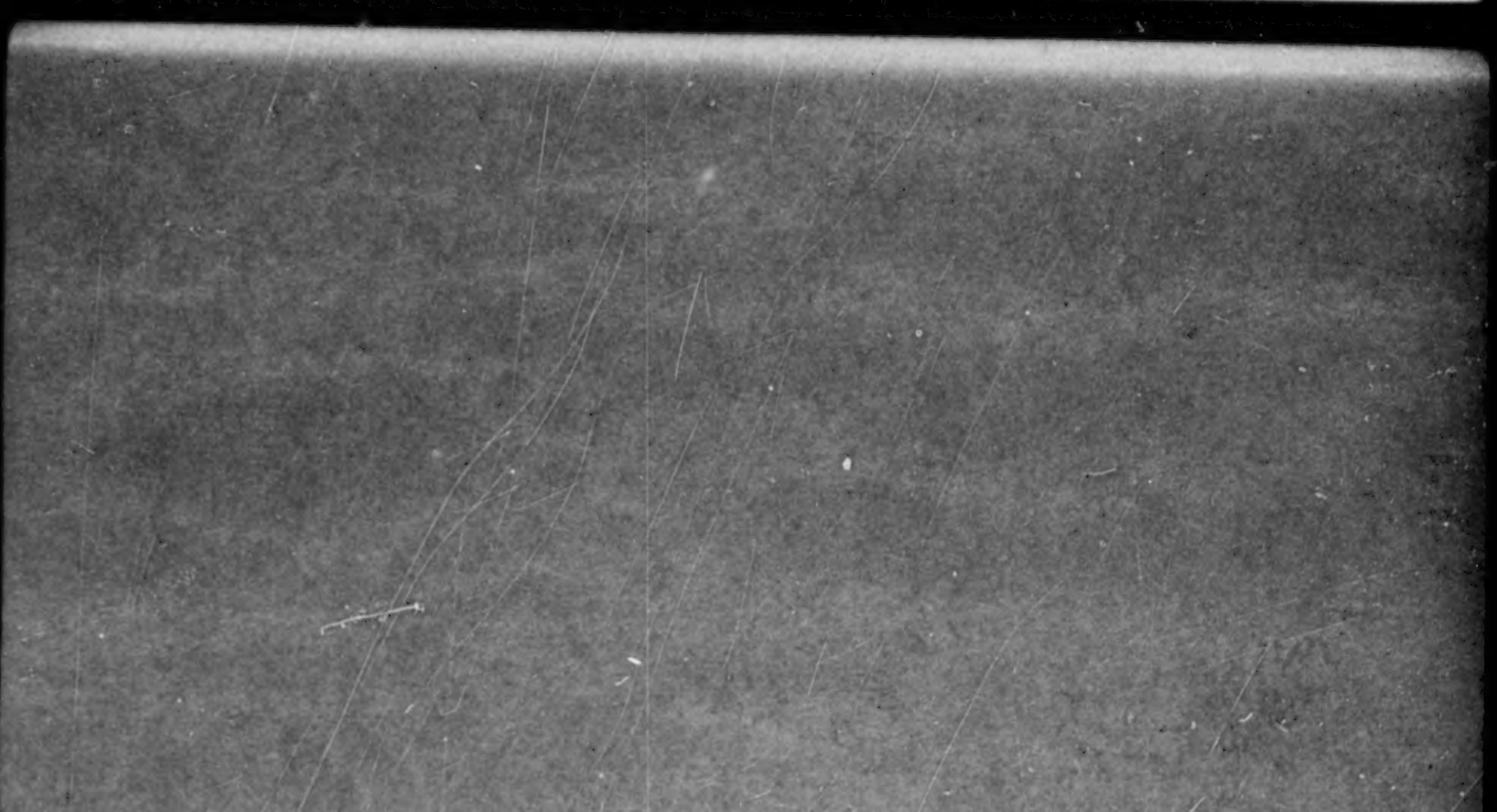
I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON AUGUST 11, 1994 AT SOUTH LAKE TAHOE, CALIFORNIA

/s/ CLARK GAREN

CLARK GAREN, DECLARANT

APPENDIX "C"



Rule 51.

Qualifications of applicants for examination.

An applicant for examination for a license to practice as an attorney and counselor at law in this state shall:

1. Have attained the age of majority.

2. Be present or available within the Sate of Nevada, and remain so until examined as required by S.C.R. 65, so as to permit and facilitate the examination, investigations, interviews and hearings necessary to determine the applicant's morals, character, qualifications and fitness to practice law.

3. Have received a degree of bachelor of laws, or an equivalent law degree, from a law school approved by the committee on legal education and admissions to the bar of the American Bar Association, and shall present evidence of the same. Provided, however, an applicant may file a bar application and be examined in advance of having received the foregoing degree if the applicant furnishes with the application a statement from the dean of the applicant's law school stating that the dean reasonably believes the applicant will receive a law degree at the end of (1) the summer quarter or semester of law school during which the examination is given, or (2) the fall quarter or semester commencing immediately following the administration of the Nevada State Bar Examination.

4. Demonstrate that the applicant is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law.

5. Not have been refused admission to practice law, or have been disbarred from the practice of law, in any state or before any court or governmental agency of the United States on the ground of unfitness of character.

6. Not be subject to any mental or emotional disorder which would render the applicant unfit to practice law.

7. An applicant who has received a degree of bachelor of laws, or an equivalent law degree, from a law school that has not been approved by the committee on legal education and admissions to the bar of the American Bar Association must be given written notice to the board of bar examiners and the clerk of the supreme court of the applicant's intent to seek a waiver of subsection 3 of this rule. The notice of intent must be served no later than one year prior to the final day for submission of an application for a license to practice as an attorney and counselor at law in this state under S.C.R. 52(1), and must state with particularity the gounds upon which the applicant seeks a waiver of the rule.

(a) The board of bar examiners, within 30 days from service of the notice of intent, shall estimate the cost of its investigation of the grounds and provide the applicant with a written estimate of costs. The applicant shall have 10 days from service of the estimate within which to pay the estimated costs to the State Bar of Nevada. Upon payment of the estimated expenses, the board of bar examiners shall investigate the grounds asserted by the applicant for the waiver of S.C.R. 51(3), and file a written report of the results of its investigation with the clerk of the supreme court no later than 180 days after the applicant pays the estimated costs.

(b) In the event the initial estimate of costs by the board of bar examiners shall prove to be inadequate, a revised written estimate shall promply be given to the applicant. The applicant, within 10 days of service of the revised written estimate, shall pay the additional estimated amount to the state bar. In the event an applicant fails to pay any estimate of costs under this rule, tha applicant shall not be permitted to apply for a license to practice as an attorney and counselor at law in this state. Costs under this rule shall include, without limitation, the cost of court reporters, consultants, experts, telephone and

telecopy, transportation, meals and lodging incurred by the board of bar examiners in the furtherance of its investigation of the grounds claimed by the applicant to justify a waiver of S.C.R. 51(3). The board of bar examiners shall promply refund any costs assessed in excess of those actually incurred in the conduct of an investigtion.

(c) The burden shall be upon the applicant to demonstrate, without imposing an excessive burden on the court or the bar, (1) that the applicant otherwise complies with all requirements for admission to practice; (2) that the education received at the law school not accredited in accordance with subsection 3 of this rule is nonetheless functionally equivalent to an education provided at an ABA-approved school and that the law school substantially conforms to the accrediation standards of the Accrediation Committee for the Section of Legal Education and Admissions of the ABA; and that the adverse determinations, if any, of the Accrediation Committee are based upon findings that are not rationally connected to the graduates' fitness and capacity to practice law and the quality of the legal education provided at the law school. (Amended eff. 2-27-83; Amended eff. 12-10-83; Amended eff. 12-16-85; Amended eff. 12-11-91.)

Rule 64

RECOMMENDATION TO SUPREME COURT FOR DENIAL OF ADMISSION FOR FALURE TO MEET REQUIREMENTS OF RULE 51.

1. Where the board of bar examiners recommends to the supreme court that an applicant be denied admission to the bar for failure to meet the requirements of S.C.R. 51(2), (4), (5) or (6), the grounds for the recommendation shall be stated in writing and shall be promptly filed with the clerk of the supreme court, together with the record of any proceedings before the board and proof of service of the recommendation upon the applicant.

2. Any applicant so notified may, within a period of 30 days from service of the notice, file a verified petition for review with the supreme court, which shall be accompanied by proof of service of a copy thereof upon the admissions director and chairman of the board of bar examiners. Service by mail is complete upon mailing. Such petition shall contain any relevant documentation necessary for the court's understanding of the matter, a statement of facts supported by adequate citation to any record, and legal points and authorities setting forth the legal basis for each ground upon which the board's recommendation is alleged to be erroneous. If the court is of the opinion that the board's recommendation should not be disturbed, it may deny the petition. Otherwise, the court may enter an order fixing time within which an answer may be filed by the board of bar examiners. Should the court determine that the petitioner is entitled to relief, it may direct the board of bar examiners to take such action as is deemed warranted under the circumstances.

3. In any proceeding before the board of bar examiners, or before the supreme court, the applicant shall have the burden of proving that the applicant meets the qualifications required for admission to practice in this state. Should an applicant fail to meet this burden of proof, the court shall refuse to disturb the adverse recommendation of the board of bar examiners. (Amended eff. 12-11-91.)

Rule 70
APPLICANTS NOT RECOMMENDED FOR ADMISSION; NOTICE, PROCEDURE FOR REVIEW.

1. The board of bar examiners shall provide notice to an applicant, at the applicant's address given in the application, whenever the board recommends that such applicant be denied admission. The notice shall state whether such recommendation is based upon a failure to pass the examination or upon a failure to qualify in any other particular. The board shall file proof of service of such notice in the supreme

court.

2. Any applicant so notified may, within a period of 30 days from the date of service of such notice, file a verified petition for review with the court. Service by mail is complete upon mailing. The petition shall contain proof of service of the petition upon the admissions director and chairman of the board of bar examiners, shall state with particularity each factual ground upon which the board's recommendation is alleged to be erroneous, and shall be accompanied by documentation necessary to the court's understanding of the matters set forth in the petition. The petition must further be accompanied by points and authorities, setting forth the legal basis for the relief requested.

3. Such petition shall show therin, as may be appropriate, that:

(a) Such applicantwas prevented from passing through fraud, imposition or coercion by the board of bar examiners; and

(b) That the applicant meets the qualifications set forth in Rule 51.

4. If the court is of the opinion that relief is not warranted, the court may deny the petition. Otherwise, the court may enter an order fixing time within which an answer may be filed by the board of bar examiners or its representative. The answer shall be served upon the applicant. If any such answer is served and filed, the applicant may, within 15 days thereafter, or within such further time as the court may grant, serve and file a reply thereto.

5. The burden shall be upon the applicant to establish to the satisfaction of the court that the adverse recommendations of the board of bar examiners were based upon fraud, imposition or coercion and that the applicant meets the qualifications set forth in Rule 51. Should an appliant fail to meet this burden of proof, the court shall refuse to disturb the adverse recommendations of the board of bar examiners. (Amended eff. 4-27-75; Amended eff. 12-11-91.)

APPENDIX "D"

Before the Committee

On Functional Equivalency

In Re:	)
	)
Clark Garen,	)
	)
Petitioner.	)
	)

REPORT OF THE COMMITTEE ON FUNCTIONAL EQUIVALENCY OF THE STATE BAR OF NEVADA PURSUANT TO SCR 51(7)

On May 20, 1993, pursuant to SCR 51(7), Petitioner Clark Garen served his written Notice of Intent to seek waiver of SCR 51(3) which requires an applicant for examination for a license to practice as an attorney and counselor at law in the State of Nevada to have received a degree from a law school approved by the Committee on Legal Education and Admissions to the bar of the American Bar Association. Pursuant to SCR 52(7)(a), Petitioner was served with a written estimate of the costs of investigation of the grounds set fourth in the waiver. On March 9, 1994, Petitioner, having been served with written Notice of the date, time and place of his hearing pursuant to SCR 59, appeared before this Committee at the offices of the State Bar of Nevada, 201 Las Vegas Blvd. So., Ste 200, Las Vegas, Nevada 89101, for the purpose of investigating the grounds asserted in Petitioner's request for waiver of SCR 51(3).

The following members of the Committee were present: Thomas D. Beatty, Esq., Chair, Richard M. Trachok, II, Esq., Vice-Chair, Elizabeth Goff Gonzalez, Esq., Rew R. Goodenow, Esq., Kathryn E. Landreth, Esq., Harold M. Morse, Esq., and Jeffrey R. Rodefer, Esq. Also present were

Roger A. Jones, Director of Admissions, and Deena R. Trueblood, Assistant Director of Admissions. The Committee having received sworn testimony and exhibits, and having carefully considered the presentments of Petitioner, hereby submits the following findings and recommendations pursuant to SCR 51(7)(a).

FINDINGS

The Committee has jurisdiction in this matter and Petitioner is subject to that jurisdiction pursuant to SCR 51(7).

The burden is upon the Petitioner pursuant to SCR 51(7)(c), to demonstrate that: (1) he otherwise complies with all requirements for admission to practice law in this state; and (2) the education received at his law school not accredited in accordance with SCR 51(3) is nonetheless functionally equivalent to an education provided at an ABA approved law school and that the law school substantially conforms to the accrediation standards of the Legal Accrediation Committee for the Section of Legal Education and Admissions of the ABA; and that adverse determinations, if any, of the Accrediation Committee are based upon findings that are not rationally connected to the graduate's fitness and capacity to practice law and the quality of legal education provided at the law school.

The Petitioner represented the following to the Committee:
1) He received a Juris Doctorate decree in June, 1971, from the University of West Los Angeles (non-ABA approved); 2) He obtained the degree of LL.M (tax) from Golden Gate University, School of Law on December 31, 1993; 3 He was admitted to practice law in California and Texas; 4) He practiced law in California from 1971 to the present.

The Committee, after deliberation and unanimous vote, hereby finds that the Petitioner has not met his burden of proof under SCR

51(7)(c) by demonstrating that the legal education he received is functionally equivalent to that from an ABA accredited institution. The Committee specifically finds as follows:

1) Petitioner did not submit any evidence to this Committee that the education that he received at the University of West Los Angeles School of Law from 1968 to and including 1971 was the functional equivalent of an education from an ABA approved law school. Indeed, the only information submitted by the Petitioner regarding the education received clearly established to the Committee that the education received during the period in question fell far short of the functional equivalent of that provided at an ABA institution. According to the Petitioner, the faculty consisted almost entirely of part-time instructors, the library was inadequate and the students used the county library facilities, and the admission policies allowed any applicant to attend whether or not he or she had received a bachelor's degree. It is important to note that the law school had been in existence only two years before Petitioner's commencement of his studies. Consequently, Petitioner failed to meet the burden of proof required to seek a waiver of SCR 51(3) based upon the education that he received from the University of West Los Angeles from 1968 to 1971.

2) The Petitioner introduced into evidence his academic transcript from Golden Gate University of Law which identifies the courses completed by Petitioner in the LL.M. (tax) program. The course work completed by Petitioner at Golden Gate University is in a narrow area of law (tax). The tax program completed by Petitioner would not be a substitute for course work required by an ABA accredited law school for a basic legal education in contracts, torts, property, criminal law, etc. Accordingly, the Committee finds that the tax course taken by the Petitioner at Golden Gate University would not

be the functional equivalent of an education provided by an ABA accredited law school in core curriculum.

3) Petitioner did not serve any clerkship or apprentice programs in the State of Nevada. Petitioner has no special training in Nevada law.

4) Petitioner does not have any teaching experience in an ABA law school

5) Petitioner's practice almost exclusively consists of representing collection agencies. Petitioner's clients from the agencies testified that they are satisfied with Petitioner's representation. Petitioner introduced no testimony or evidence from other practioners or judges assessing the quality of his work in California.

6) The Committee was especially concerned with Petitioner's activities in addition to the practice of law. Petitioner's letterhead for his Nevada office lists him as an attorney at law with an office in Las Vegas. A copy of the letterhead is attached hereto as Exhibit "A". It was the opinion of the Committee that the letterhead was deceptive and would lead the reader to believe that he was licensed to practice in Nevada. When questioned on the subject, the Petitioner testified that any law that was practiced out of the Nevada office was conducted in concert with Mr. Thornburg a licensed Nevada attorney. When questioned, Mr. Thornburg testified that he had never worked as an attorney in Nevada and had never worked in the Nevada office. Mr. Thornburg is a full-time pilot for Delta Airlines and although licensed as an attorney in Nevada and California, has never practiced law, except for a brief period about ten years ago when he practiced with Mr. Garen while Garen was handling Mr. Thornburg's divorce.

7) The Committee had serious concerns regarding Petitioner's character and fitness and recommends a full hearing on the subject in the event that this recommendation is reversed.

The Committee, after deliberation and unanimous vote of the members present, hereby finds that the Petitioner has not met his burden of proof under SCR 51(7)(c) by demonstrating that the legal education he received is functionally equivalent to that from an ABA accredited institution. The Committee specifically finds that:

1) The Petitioner's education received from the University of West Los Angeles School of Law from 1968 to and including 1971 is not the functional equivalent of an ABA accredited law school;

2) The LL.M degree in tax from the Golden Gate University is not the functional equivalent of a bachelor of laws or juris doctor degree from an ABA accredited law school; and

3) Petitioner failed to demonstrate that his education, training, experience and prior practice in California is sufficient to justify a waiver of SCR 51(7).

The Committee finds, based upon the limited information provided by Petitioner to date, that Petitioner is not in compliance with SCR 51(4)(character and fitness) and that a full hearing thereon will be required.

Petitioner is hereby notified of and has the right within thirty (30) days of notification to appeal to the Nevada Supreme Court requesting review of the Committee's recommendation pursuant to SCR 56(1)(f) and, when applicable, SCR 64.

Cause Appearing:

RECOMMENDATIONS

IT IS HEREBY RECOMMENDED tht the petition of Clark Garen requesting waiver of SCR 51(3) be denied.

Dated this 28th day of March, 1994.

Functional Equivalency Committee

State Bar of Nevada

BY: /s/ THOMAS D. BEATTY
Thomas D. Beatty, Esq., Chair

APPENDIX "E"

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No._____

CLARK GAREN,

Petitioner.

_____/

VERIFIED PETITION UNDER NEVADA SUPREME COURT RULE 56(1)(f) FOR WAIVER OF S.C.R. 51(3)

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This Verified Petition under S.C.R. 56(1)(f) is filed by CLARK GAREN.

I
FACTUAL BACKGROUND

Your Petitioner has been a practicing attorney since January 5, 1972 in California and in Texas since October 4, 1985. Your Petitioner received his Juris Doctor degree in 1971 from the University of West Los Angeles (non A.B.A. approved) and your Petitioner received his Master of Laws in Taxation in December, 1993 from Golden Gate University (school and Master's program both A.B.A. approved). Your Petitioner filed a Petition under S.C.R. 70 on April 27, 1993 and a Notice of Intent to Seek a Waiver under Rule 51(7) on May 21, 1993. On May 28, 1993, this Court entered an order denying the April 27, 1993 Petition for a waiver of S.C.R. 51(3) for the purposes of the July, 1993 bar examination, and referred the matter to the Board of Bar Examiners for an appropriate investigation and report respecting the 1994 Nevada State Bar Examination under S.C.R. 51(7)(a), (b), and (c).

On March 9, 1994, hearing was held pursuant to Rule S.C.R. 59. A Report of the Committee on Functional Equivalency of the State Bar of Nevada Pursuant to S.C.R. 51(7) recommending that a waiver of S.C.R. 51(3) be denied to your Petitioner was prepared on March 28, 1994. A copy was served on your Petitioner by the State Bar of Nevada on March 29, 1994.

Your Petitioner submits this Verified Petition for relief under S.C.R. 56(1)(f) and concurrently herewith submits a pleading entitled, "Relevant Documents Under S.C.R. 56(1)(f) in Support of Verified Petition Consisting of Documentary Evidence Previously Submitted to State Bar of Nevada Under S.C.R. 51(7)(c) For Waiver of S.C.R. 51(3). This pleading includes all the documentary evidence submitted to the State Bar of Nevada which are identified by Exhibit Numbers 1 through 11, inclusive. New exhibits not submitted to the

State Bar of Nevada are attached to this petition identified by Exhibit Letters A, B, and C.

II
ISSUES FOR CONSIDERATION

Your Petitioner requests relief from the findings of the Report of the Committee on Functional Equivalency of the State Bar of Nevada Pursuant to S.C.R. 51(7) on the following grounds:

1. S.C.R. 51(7)(c) is constitutionally defective in that it does not contain any instruction regarding the standard of proof required
2. The Findings of the Committee are not supported by the evidence because the Committee disregarded substantially all of the evidence introduced by Petitioner at the hearing and misrepresented the balance of the evidence introduced by Petitioner.
3. The Findings of the Committee are not supported by the evidence because the Committee has not followed the previous directions of the Court to consider stated additional factors.
4. Receipt of a Master of Laws degree from an ABA approved program at an A.B.A. approved law school constitutes sufficient evidence to sustain Petitioner's Burden of proof to show that Petitioner's Legal Education is the functional equivalent of the education provided at an A.B.A. approved law school.
5. S.C.R. 51(7)(c) requiring Petitioner to sustain the burden of proof regarding **BOTH** the quality of the education offered by the law school **AND** the quality of the education actually received by Petitioner is an unconstitutional violation of due process
6. Supreme Court Rule 70.5 establishing the confidentiality of opinions issued under S.C.R. 57(7)(c) constitutes a denial of due process to Petitioner.
7. The hearing process employed by the Committee violates Petitioner's right to due process in that the committee intentionally failed to give Petitioners adequate notice under S.C.R.

57(7)(c) that the admissible evidence under S.C.R. 51(7)(c) had been changed by the Court in January, 1994 and selected only portions of the evidence at the hearing to support its decision which had been made well in advance of the proceedings.

8. The Committee on Functional Equivalency violated due process by addressing questions of fitness and character without giving adequate notice to Petitioner

9. Under the principle of comity, this Court is obligated to recognize the accreditation of the University of West Los Angeles by the State Bar of California;

10. The Full Faith and Credit Clause of the United States Constitution requires that Nevada give full faith and credit to the accreditation of the University of West Los Angeles by the State of California.

III

S.C.R. 51(7)(c) IS CONSTITUTIONALLY DEFECTIVE IN THAT IT DOES NOT CONTAIN ANY INSTRUCTION REGARDING THE STANDARD OF PROOF REQUIRED

S.C.R. 51(7)(c) provides that, "The burden shall be upon the applicant to demonstrate, without imposing an excessive burden on the Court...."

S.C.R. 51(7)(c) gives no direction to the applicant as to what his standard of proof is.

> "The phrase "burden of proof," as used by the courts, is ambiguous; it is used indiscriminately as meaning either the necessity of establishing a fact or the necessity of making or meeting a prima facia showing.
>
> The phrase "burden of proof as used by the courts, is one of double meaning, which circumstance has been the cause of confusion so great as to suggest the propriety of adopting a less objectionable term. The ambiguity lies in the indiscriminate use of the phrase "burden of proof," as meaning either the necessity

of establishing the existence of a certain fact or set of facts by evidence which preponderates to a legally required extent, or the necessity which rests on a party...."

31A, Corpus Juris Secundum 164-165, Evidence #103

"**Sufficient evidence** has been defined to be such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it is adduced. Evidence is sufficient if it is such as to satisfy an unprejudiced mind."

32A, Corpus Juris Secundum 632, Evidence #1016

"**Preponderance of evidence.** the rule, stated infra #1019, that in civil cases an issue of fact cannot be regarded as proved unless the party having the burden of proof thereon produces a preponderance of evidence is sometimes embodied in statute, and a preponderance of evidence, or preponderant evidence, has been defined as that superior weight of evidence which, while not enough wholly to free the mind from a reasonable doubt, is sufficient to incline a reasonable and impartial mind to one side of the issue rather than to the other."

32A, Corpus Juris Secundum 632 - 633, Evidence #1017

COMMENT: The failure to establish the standard of proof required clearly operates as a substantive and procedural denial of due process to Petitioner because Petitioner is not advised what that burden of proof is. Is the burden of proof sufficient evidence? Is the burden of proof by preponderance of the evidence? Or is the burden of proof clear and

convincing evidence or evidence beyond a reasonable doubt.

Petitioner, in preparing his case, assumed that the standard of proof was either substantial evidence or preponderance of the evidence, and Petitioner sustained his burden of proof under either of these standards. However, the report of the committee employed a much more stringent standard of evidence. This constitutes a violation of Petitioner's procedural due process because the rules and procedures utilized never notified Petitioner that a more stringent standard of evidence would be used by the Committee.

This practice constitutes a violation of substantive due process as well because it enables the committee and the Court to select the standard of evidence according to the result desired. Your Petitioner is not at this time accusing either the Committee or this Court of **actually** employing different standards of evidence for different applicants, but your Petitioner does assert that the possibility for such irregularity subjects the rule **and** the procedure to constitutional challenge as a violation of due process. Finally, since this is in essence a civil proceeding, your petitioner asserts this Court should adopt preponderance of the evidence as its standard of evidence in S.C.R. 51(7)(c) proceedings.

IV

THE FINDINGS OF THE COMMITTEE ARE NOT SUPPORTED BY THE EVIDENCE BECAUSE SUBSTANTIALLY ALL THE EVIDENCE INTRODUCED BY PETITIONER IS EITHER DISREGARDED OR MISREPRESENTED

Your Petitioner submits the following table which clearly illustrates the gross misrepresentations of the findings:

FINDING NUMBER 1:
PETITIONER DID NOT SUBMIT ANY EVIDENCE TO THIS COMMITTEE THAT THE EDUCATION HE RECEIVED AT THE UNIVERSITY OF WEST LOS ANGELES SCHOOL OF LAW FROM 1968 TO AND INCLUDING 1971 WAS THE FUNCTIONAL EQUIVALENT OF AN EDUCATION FROM AN A.B.A. APPROVED SCHOOL

EVIDENCE SUPPORTING:	EVIDENCE NOT SUPPORTING:
1. Law school was new and not accredited by the A.B.A.	1. Law School was accredited by the State Bar of Calif. and Western Association of Colleges and Universities (Ex. 11)
2. Law school used part-time instructors;	Instructors were A.B.A. graduates and practicing attorneys (Ex. 11)
3. Law school students used L. A. County Law Library as well as U. W. L. A. Law Library	U.W.L.A. Law Library was reasonable for study of law, (Ex. 11) and was adequately supplemented by L. A. County Law Library (which is more extensive than any A.B.A. University Law Library) and Law Libraries of U.S.C. and U.C.L.A. (Oral Testimony)

4. Law School admissions did not require a bachelors degree	In 1972, 24 admitted students possessed bachelors degree or higher; 15 possessed at least 60 qualifying units; and only 11 students qualified by taking the equivalency examination (Ex. 11)

EVIDENCE PRESENTED BUT DISREGARDED BY COMMITTEE:

1. Successful completion of Master of Law in Tax at Golden Gate University with overall 3.29 G.P.A. demonstrated that education received at U.W.L.A. was the functional equivalent of that offered at an A.B.A. law school.

2. Sworn statement of Marci Kelly, Assistant Dean of Golden Gate University and Director of LL.M. program establishing qualifications of witness to give expert witness testimony followed by expert opinion of witness that Petitioner had received functional equivalent of an ABA education at the University of West Los Angeles, School of Law (Ex. 1)

3. Sworn statement of Joseph Walsh, Dean of the School of Tax at Golden Gate University who taught two class attended by Petitioner establishing qualifications of witness to give expert opinion testimony followed by expert opinion of witness that Petitioner had received functional equivalent of an ABA education at the Univ. of West Los Angeles, School of Law (Ex. 1)

4. Sworn statement of Garrett C. Dailey, Instructor at School of Tax at Golden Gate University who taught one class attended by Petitioner establishing qualifications of witness to give expert opinion testimony followed by expert opinion of witness that Petitioner had received functional equivalent of an ABA education at the University of West Los Angeles, School of Law (Ex. 1)

5. Petitioner's service on the California Judicial Council Advisory Committee on Forms with other prominent judges and attorneys in California established by Declaration of Jerome Fishkin. (Ex. 2)

6. Oral testimony and written declaration presented by James B. Fitzpatrick, a client since 1975, describing numerous matters handled for him by your Petitioner (Ex. 2)

7. Sworn statement of Jerome Fishkin, Senior Prosecutor of Discipline Cases for the State Bar of California establishing qualifications of witness to give expert opinion testimony followed by expert opinion of witness that Petitioner had received functional equivalent of an ABA education at the University of West Los Angeles, School of Law (Ex. 2)

8. Oral testimony of Gerald A. Smith, who established a factual basis for his opinion by comparing his experience with Petitioner with his experience with 11 other attorneys with A.B.A. legal educations, and stated in his opinion Petitioner demonstrated functional equivalent of A.B.A. education

9. Oral testimony of Jon Thornburgh, an attorney in California, Nevada and Arizona and a graduate of an A.B.A. law school that in his opinion Petitioner had the functional equivalent of an A.B.A. education. Mr. Thornburgh testified he

had failed California Bar on first attempt and that Petitioner taught him how to pass bar examinations in 1983, which was 11 years after petitioner had taken bar examination.

10. Oral testimony of Mary McGee, a client since 1972, who established a factual basis for opinion testimony and stated that in her opinion Petitioner possessed the functional equivalence of an A.B.A. legal education

11. Exhibit 5 representing descriptions and key pleadings from Easement by Prescription Appeal handled by Petitioner

12. Exhibit 6 representing descriptions and key pleadings from bankruptcy trustee avoidance powers case based on California Civil Code 3440, which provided any conveyance transferring title without a transfer of possession was conclusively presumed as a fraud on creditors and voidable

13. Exhibit 7 representing descriptions and key pleadings from an unfair business practices case involving data processing companies.

14. Exhibit 8 representing descriptions and key pleadings from a case involving vicarious liability for the sexual misconduct of an employee tc a customer off the premises

15. Exhibit 9 representing descriptions and key pleadings from a case involving numerous fraudulent conveyances; bankruptcy; and tax law. Although this case did involve a collection agency; I was representing the debtor!

16. Exhibit 10 representing descriptions and key pleadings involving a violation of the United States Commerce Clause by the State of Arizona. Although my client in this matter is a collection agency; the case has nothing to do with typical collection agency law activities;

17. U.W.L.A. offered complete legal curriculum (Ex. 11)

18. Your Petitioner took First Year Students Bar Examination administered by State Bar of California and received grade of "B". Only 20 grades of A or B were awarded to over 2,000 applicants. (Oral testimony confirmed by entries on U.W.L.A. transcript record in possession of Committee but not in possession of Petitioner.)

19. As a Third Year Law Student your Petitioner prepared an Appellate Brief on a case involving an Easement by Prescription which resulted in a reported appellate decision adopting reasoning advocated in Petitioner's Brief (Ex. 5)

FINDING NUMBER 2:

COURSES TAKEN BY PETITIONER AT GOLDEN GATE UNIVERSITY ARE NOT A SUBSTITUTE FOR COURSE WORK REQUIRED BY AN ABA ACCREDITED LAW SCHOOL FOR BASIC LEGAL EDUCATION IN CONTRACTS, TORTS, PROPERTY, CRIMINAL LAW, ETC.

This is a misrepresentation of the arguments advanced by Petitioner.

Petitioner has never claimed that the course work taken for the Master of Laws (Tax) program was a **substitute** for the course work required for basic legal education. Petitioner has claimed that the course work required for basic legal education was a **PREREQUISITE** to completion of the course work required for the Master of Laws (Tax) program. Petitioner has never claimed that an LL.M. degree from an ABA approved program at an ABA approved law school was a substitute law degree for the LL.B. Petitioner has consistently maintained that the LL.M. degree from an ABA approved program at an ABA approved law school is a **SUPERIOR** degree to the LL.B., and therefore satisfies the requirements of S.C.R. 51(3).

"The purpose of the educational requirement embodied in S.C.R. 51(3) is to promote high standards of competence among members of the State Bar of Nevada. In Re Nort, 96 Nev. 605, 605 Pac 2d 627 (1980). To evaluate an applicant's legal education effectively and expeditiously, without imposing an excessive burden on our resources, this court has elected to utilize the accreditation resources of the ABA."
Bennett vs. State Bar, 302 Nev. 519, 522 (1987)

"Stated another way, if an applicant proves to this Court that the education received at a law school not accredited by the ABA is nonetheless functionally equivalent to an education provided at an ABA approved school, and the applicant has otherwise complied with all the requirements of the law relative to admission to the State Bar of Nevada, the objective of S.C.R. 51(3) has been met and a waiver of the rule may be appropriate."
Bennett vs. State Bar, (1987), 103 Nv. 519, 522

"On the other hand, we must ensure that applicants are treated fairly and that any qualification for admission to the bar "must have a rational connection with the applicant's fitness or capacity to practice law" (citation omitted). Accordingly, we have recognized exceptions and waived the application of S.C.R. 51(3) "whenever it can be demonstrated that the rules operate in such a manner as to deny admission to a petitioner arbitrarily and for a reason not related to the essential purpose of the rule."
Bennett vs. State Bar, 103 Nev. 519, 522 ((1987)

Petitioner asserts that earning an LL.M. degree from a program approved by the ABA at a law school approved by the ABA clearly satisfies

the objective of S.C.R. 51(3) to "to promote high standards of competence among members of the State Bar of Nevada" and "To evaluate an applicant's legal education effectively and expeditiously, without imposing an excessive burden on our resources". Therefore, a waiver of S.C.R. 51(3) to the recipient of a LL.M. degree from an ABA approved program at an ABA approved law school is essential to attain the Court's stated objective to "ensure that applicants are treated fairly and that any qualification for admission to the bar "must have a rational connection with the applicant's
fitness or capacity to practice law" and to avoid operation of the rules "in such a manner as to deny admission to a petitioner arbitrarily and for a reason not related to the essential purpose of the rule."

Petitioner has alternatively maintained that satisfactory completion of an LL.M. program approved by the ABA at an ABA approved law school constitutes satisfactory evidence that the foundational legal education received at the non-ABA approved law school was the functional equivalent of the education provided by an ABA approved law school.

For example, **thorough** understanding of the law of contracts, torts, and property is required for successful graduate level law study of the tax aspects of a transaction, including proper depreciation, timing, and characterization. A complete working knowledge of the law of contracts, torts, and property are pre-requisites to successful completion of graduate level law study of the tax aspects and tax treatment of transactions.

Complete knowledge of criminal law, criminal procedure, and Federal Civil Procedure are pre-requisites to successful graduate level law study of tax procedure. Graduate level law study of criminal tax law and procedure requires a complete understanding of the law of criminal intent; constitutional rights, and criminal procedure. Graduate level law study of civil tax

procedure requires a full and complete understanding of the law of civil procedure, Federal Rules of Civil Procedure, the Federal Court system, as well as United States Tax Court procedures.

Finally, graduate level law study of state and local taxation require as a pre-requisite an in depth and extensive knowledge of Constitutional Law.

The courses taken are not a substitute for the basic course work, but the successful completion of the courses at the Master's level requires and demonstrates a full and complete working knowledge of the basic course work! Furthermore, the successful completion of the courses required for the LL.M. demonstrate that the successful student in fact possessed the functional equivalent of the education provided at an ABA approved law school.

FINDING NUMBER 3:

PETITIONER DID NOT SERVE ANY CLERKSHIP OR APPRENTICE PROGRAMS IN THE STATE OF NEVADA. PETITIONER HAS NO SPECIAL TRAINING IN NEVADA LAW.

Petitioner concedes this finding of fact is true. However, Petitioner contends this finding is irrelevant to any issue before the Committee or this Court. Furthermore, if Petitioner had any evidence to introduce to rebut this finding, the Committee instead would have charged Petitioner with practicing law without a license.

Additionally, this finding is a violation of due process, in that nothing in the Supreme Court Rules or the notices from the Committee on Functional Equivalence notified Petitioner that this issue would be a factor in evaluation the Petition for Waiver of S.C.R. 51(3).

FINDING NUMBER 4:

PETITIONER DOES NOT HAVE ANY TEACHING EXPERIENCE AT AN ABA LAW SCHOOL

Petitioner concedes that this finding is true.

FINDING NUMBER 5(a):

PETITIONER'S PRACTICE ALMOST EXCLUSIVELY CONSISTS OF REPRESENTING COLLECTION AGENCIES

EVIDENCE SUPPORTING:

There is no evidence in the record that will support this finding. This finding is contrary to the evidence and testimony produced.

EVIDENCE NOT SUPPORTING:

1. Testimony of Petitioner of the nature of his practice being defined by types of cases Petitioner did not accept, which included probate, wills, criminal law, and securities and exchange commission offerings

2. Exhibit 5 representing descriptions and key pleadings from Easement by Prescription Appeal handled by Petitioner

3. Exhibit 6 representing descriptions and key pleadings from bankruptcy trustee avoidance powers case based on California Civil Code 3440, which provided any conveyance transferring title without a transfer of possession was conclusively presumed as a fraud on creditors and voidable

4. Exhibit 7 representing descriptions and key pleadings from an unfair business practices case involving data processing companies.

5. Exhibit 8 representing descriptions and key pleadings from a case involving vicarious liability for the sexual misconduct of an employee to a customer off the premises

6. Exhibit 9 representing descriptions and key pleadings from a case involving numerous fraudulent conveyances; bankruptcy; and tax law. Although this case did involve a collection agency; I was representing the debtor!

7. Exhibit 10 representing descriptions and key pleadings involving a violation of the United States Commerce Clause by the State of Arizona. Although my client in this matter is a collection agency; the case has nothing to do with typical collection agency law activities;

8. Testimony of Gerald A. Smith regarding numerous matters I have handled for him since 1975. Mr. Smith does not and has never owned a collection agency; Mr. Smith is in the data processing business!

9. Testimony of Mary McGee regarding numerous matters I have handled for her since 1972. Ms. McGee does not and has never owned a collection agency; she has always been in retail sales.

10. Testimony of Jon P. Thornburgh respecting numerous matters I have handled for him, including teaching him how to pass bar examinations. Mr. Thornburgh does not and has never owned a collection agency.

11. Oral and written testimony of James B. Fitzpatrick describing several legal matters handled for him by your Petitioner which are unrelated to the representation of his collection agencies (Ex. 2)

FINDING NUMBER 5(b):

PETITIONER'S CLIENTS FROM THE COLLECTION AGENCIES TESTIFIED THEY ARE SATISFIED WITH PETITIONER'S REPRESENTATION

This finding misrepresents the evidence because only **ONE** client from a collection agency presented testimony, while three other clients who have nothing to do with the collection agency business also presented testimony. The Findings were deliberately worded to cause the incorrect conclusion that **ONLY** owners of collection agencies testified on behalf of Petitioner.

Petitioner also presented testimony from Gerald A. Smith, a client since 1978. Mr. Smith has operated several data processing businesses and has never been in the collection agency business. Mr. Smith testified that he had been dealings with attorneys for more than 30 years, and that your Petitioner was the only attorney he had ever found whose work he was totally satisfied with. Mr. Smith also testified that he desired to re-locate his business that would eventually employ more than 100 people to Nevada, but that he would not do so if your Petitioner were not admitted to practice here.

Your Petitioner also presented testimony from Mary McGee, who testified that she had known Petitioner since 1966 and that Petitioner had represented her since 1972. Ms. McGee testified that she was able to retire in her early 50's by following the legal advice of your Petitioner.

Your Petitioner also represented testimony from Jon P. Thornburgh, an attorney licensed to practice law in California, Nevada, and Arizona. Mr. Thornburgh testified that your Petitioner handled numerous matters for him, and that the legal work performed by your Petitioner was outstanding.

FINDING NUMBER 5(c):

PETITIONER INTRODUCED NO TESTIMONY OR

EVIDENCE FROM OTHER PRACTITIONERS OR JUDGES ASSESSING THE QUALITY OF HIS WORK IN CALIFORNIA

EVIDENCE SUPPORTING:

There is no evidence in the record that will support this finding. This finding is contrary to the evidence and testimony produced.

EVIDENCE NOT SUPPORTING:

1. Exhibit 1, Declaration of Marci Kelly;

2. Exhibit 1, Declaration of Joseph Walsh;

3. Exhibit 1, Declaration of Garrett C. Dailey

4. Exhibit 2, Declaration of Jerome Fishkin

5. Testimony of Jon P. Thornburgh, an attorney admitted to practice law in California, Arizona, and Nevada. Mr. Thornburgh testified regarding numerous matters I have handled for him, including teaching him how to pass bar examinations. Mr. Thornburgh stated that the legal knowledge and skill and competency of your Petitioner was outstanding.

EVIDENCE PRESENTED BUT DISREGARDED BY COMMITTEE:

NOTE: THE COMMITTEE INSTRUCTED PETITIONER AS FOLLOWS:

"THE COMMITTEE HAS NEEDS TO KNOW THE FOLLOWING ... LEGAL PRACTICE SUBSEQUENT TO LAW SCHOOL.

The following evidence was produced by Petitioner to the Committee to show legal practice subsequent to law school. It is relatively easy for any practitioner to obtain self-serving declarations from his colleagues in the bar and on the bench, but Petitioner did not use this technique because the declarant would only be able to establish the professional competence of Petitioner as

observed by them; and would **NOT** have observed sufficient practice of Petitioner to express an expert opinion respecting the underlying legal education of Petitioner. Because the practice 6 your Petitioner had covered so many different areas of law and because your Petitioner possessed extensive records from the case files themselves, and because your Petitioner's relationships with his clients were so satisfactory that your Petitioner was able to obtain permission from his clients to present these materials to the Committee and this Court, Petitioner introduced evidence of his legal practice subsequent to law school by introducing actual pleadings and case files covering many different areas of law. If the Committee on Functional Equivalence wanted Declarations from other practitioners and judges they should have afforded Petitioner due process by so notifying him. Irrespective of the notice issue, there is no justification for the carefully worded finding by the Committee on Functional Equivalence to avoid reporting the following evidence actual produced by Petitioner to this Court.

1. Exhibit 5 representing descriptions and key pleadings from Easement by Prescription Appeal handled by Petitioner
2. Evidence of the competence of this proceeding is the appellate court decision in favor of my position. (Ex. 5)
3. Exhibit 6 representing descriptions and key pleadings from bankruptcy trustee avoidance powers case based on California Civil Code 3440, which provided any conveyance transferring title without a transfer of possession was conclusively presumed as a fraud on creditors and voidable
4. Exhibit 7 representing descriptions and key pleadings from an unfair business practices case involving data processing companies.

5. Evidence of the competence of the representation is the testimony from the client and settlement of the case with the client getting everything desired plus $60,000 in damages. (Ex. 7)
6. Exhibit 8 representing descriptions and key pleadings from a case involving vicarious liability for the sexual misconduct of an employee to a customer off the premises
7. Evidence of the competence of the representation is the order granting summary judgment to my client. (Ex. 8)
8. Exhibit 9 representing descriptions and key pleadings from a case involving numerous fraudulent conveyances; bankruptcy; and tax law.
9. Evidence of the competence of my representation is the pending motion of the trustee to settle the case for less than was initially offered to the opposing party by my clients (Ex. 9)
10. Exhibit 10 representing descriptions and key pleadings involving a violation of the United States Commerce Clause by the State of Arizona.
11. Testimony of Gerald A. Smith regarding numerous matters I have handled from him since 1975.
12. Testimony of Mary McGee regarding numerous matters I have handled for her since 1972.
13. Oral and written testimony of James B. Fitzpatrick describing numerous matters handled on his behalf by your Petitioner since 1975. (Ex. 2)

V

THE FINDINGS OF THE COMMITTEE ARE INCORRECT BECAUSE THE COMMITTEE HAS NOT FOLLOWED THE PREVIOUS DIRECTIONS OF THE COURT TO CONSIDER STATED ADDITIONAL FACTORS

In January, 1994, this Court issued an unpublished opinion directed the State Bar of Nevada not to exclude applicants for reasons unrelated to the essential purpose of this rule. At that time, the Court directed the State Bar of Nevada to consider the following matters in evaluating Petitioners for Waiver of S.C.R.

51(3):

1. Admission in other jurisdictions;
2. Legal practice subsequent to law school graduation;
3. Current standing in other jurisdictions;
4. Additional legal education;
5. Lecturing or teaching at legal institutions;

Your Petitioner produced substantial evidence establishing a basis for waiver on the first four points, but this evidence was deliberately omitted from the Report of the Committee on Functional Equivalence. The evidence introduced on each of these first four issues is as follows:

ISSUE NUMBER 1:
ADMISSION IN OTHER JURISDICTIONS

Petitioner submitted evidence of being admitted to practice before the following courts:

California	January 5, 1974
Texas	October 4, 1985

NOTE: Texas also requires graduation from an A.B.A. approved school as a condition for admission but Texas waived this requirement for Petitioner

United States District Court for
- a. Central District of California
- b. Southern District of California
- c. Eastern District of California
- d. Northern District of California
- e. Arizona
- f. Southern District of Texas

United States Circuit Court of Appeals for the Ninth Circuit
United States Tax Court
United States Supreme Court

Petitioner also testified that he had just applied for admission to the State Bar of Washington, and that he had just taken the February, 1994 Washington State Bar Examination.

ISSUE NUMBER 2:

LEGAL PRACTICE SUBSEQUENT TO LAW SCHOOL:

1. Petitioner's service on the California Judicial Council Advisory Committee on Forms with other prominent judges and attorneys in California established by Declaration of Jerome Fishkin. (Ex. 2)
2. Sworn statement of Jerome Fishkin, Senior Prosecutor of Discipline Cases for the State Bar of California (Ex. 2)
3. Oral testimony of Gerald A. Smith, who described how Petitioner had handled several legal matters for him for a period covering 1978 to the present
4. Oral testimony of Jon Thornburgh, an attorney in California, Nevada and Arizona and a graduate of an A.B.A. law school and a client of your Petitioner since 1975 who described how Petitioner had handled several legal matters for him
5. Oral testimony of Mary McGee, a client since 1972, who described several legal matters that your Petitioner had handled for her.
6. Exhibit 5 representing descriptions and key pleadings from Easement by Prescription Appeal handled by Petitioner
7. Exhibit 6 representing descriptions and key pleadings from bankruptcy trustee avoidance powers case based on California Civil Code 3440, which provided any conveyance transferring title without a transfer of possession was conclusively presumed as a fraud on creditors and voidable
8. Exhibit 7 representing descriptions and key pleadings from an unfair business practices case involving data processing companies.
9. Exhibit 8 representing descriptions and key pleadings from a case involving vicarious liability for the sexual misconduct of an employee to a customer off the premises
10. Exhibit 9 representing descriptions and key pleadings from a case involving numerous fraudulent conveyances; bankruptcy; and tax law.

11. Exhibit 10 representing descriptions and key pleadings involving a violation of the United States Commerce Clause by the State of Arizona.

ISSUE NUMBER 3:

CURRENT STANDING IN OTHER JURISDICTIONS

The Committee fails to report that Petitioner is an active member in good standing in both California and in Texas with no history of any discipline.

ISSUE NUMBER 4: ADDITIONAL LEGAL EDUCATION

The Committee fails to report that Petitioner was awarded an LL.M. (Tax) degree by Golden Gate University and that Petitioner maintained a grade point average of 3.29, which was substantially in excess of the minimum grade point average required for graduation of 2.5. (Ex. 1, Declaration of Marci Kelly).

The Committee also fails to report that Golden Gate University is an ABA approved law school, and that the LL.M. (Tax) program at Golden Gate University is also specifically approved by the ABA. (Ex. 1, Declaration of Marci Kelly)

Your Petitioner asserts that the reason the Committee on Functional Equivalence failed to follow the previous directions of the Court and report the substantial evidence presented on these issues to this Court is that the Committee had already reached its decision in advance of the hearing, and the evidence on this issue could not be reconciled with the decision the Committee had made. Therefore, the only way the Committee could support its decision was to omit the issue from its report.

VI

RECEIPT OF A MASTER OF LAWS DEGREE FROM AN ABA APPROVED PROGRAM AT AN ABA APPROVED LAW SCHOOL CONSTITUTES SUFFICIENT EVIDENCE TO SUSTAIN PETITIONER'S BURDEN OF PROOF THAT PETITIONER'S LEGAL EDUCATION WAS THE FUNCTIONAL EQUIVALENT OF THE EDUCATION PROVIDED AT AN A.B.A APPROVED LAW SCHOOL

This issue was presented before the Committee on Functional Equivalence both through oral testimony and through written declarations. The Committee on Functional Equivalence failed to report on this issue and the evidence presented in support thereof in its Report and findings. Your Petitioner asserts that the obvious reason the Committee on Functional Equivalence failed to report the substantial evidence presented on this issue to this Court is that the Committee had already reached its decision in advance of the hearing, and the evidence on this issue could not be reconciled with the decision the Committee had made. Therefore, the only way the Committee could support its decision was to omit the issue from its report.

> "The purpose of the educational requirement embodied in S.C.R. 51(3) is to promote high standards of competence among members of the State Bar of Nevada. In Re Nort, 96 Nev. 605, 605 Pac 2d 627 (1980). To evaluate an applicant's legal education effectively and expeditiously, without imposing an excessive burden on our resources, this court has elected to utilize the accreditation resources of the ABA."
>
> Bennett vs. State Bar, 302 Nev. 519, 522 (1987)

Since Nevada has designated the ABA as its accreditation agent, Nevada is obligated to accept all of the favorable accreditation decisions of the ABA. It is a violation of substantive due process for Nevada to pick and choose which ABA accreditation Nevada wishes to recognize.

The requirements for admission to the Golden Gate University Master of Laws program are found on Exhibit 3, page 6 labeled "Admissions" at the top. The requirements for admission are:

"The LL.M. (Tax) Program seeks students who have graduated from an ABA approved law school. While an applicant's academic record is important, other factors will be considered in the admission decision. Superior grades in J.D. level tax classes, professional accomplishments, letters of recommendation, or other relevant facts should be noted in the application. All interested applicants are encouraged to apply."

Accordingly, it is clear that Golden Gate University requires an applicant to its Master of Laws (Tax) program to satisfy the University that the applicant has received the functional equivalent of an ABA legal education. In processing and approving the application for admission of your Petitioner, Golden Gate University specifically determined that your Petitioner had established that the legal education he had received was the functional equivalent of an ABA education. (Ex. 3, page 6, also see Ex. 1, Declaration of Joseph Walsh, 2:8 - 2:23 and Declaration of Garrett C. Dailey, 1:25 - 2:8))

In addition, expert testimony was presented to the committee (but omitted from the Committee Report and Findings) that a student could not successfully complete the Golden Gate University Master of Laws program without having first acquired the functional equivalent of an A.B.A. education. (Ex. 1, Declaration of Joseph Walsh, Dean of School of Tax, 3:1 0 3:10, also see Exhibit 1, Declaration of Garrett C. Dailey, 2:9 - 2:12)

Finally, expert testimony was presented to the committee (and omitted from the Committee Report and Findings) establishing that your Petitioner had in fact had received the functional equivalent of an ABA legal education. (Ex. 1, Declaration of Marci Kelly, page 2, paragraph 5 through page 3, paragraph 9; Declaration of Joseph Walsh, 3:11 - 4:13; Declaration of Garrett C. Dailey, 2:13 - 3:1)

Testimony was also presented (but omitted from the Committee Report and Findings) that Mr. Garen completed the Golden Gate University LL.M. (Tax) program as of December, 1993 with a final grade point average of 3.29, which was far in excess of the minimum graduation requirement of 2.5. (Ex. 1, Declaration of Marci Kelly, Page 2, Paragraph 6)

> "Stated another way, if an applicant proves to this Court that the education received at a law school not accredited by the ABA is nonetheless functionally equivalent to an education provided at an ABA approved school, and the applicant has otherwise complied with all the requirements of the law relative to admission to the State Bar of Nevada, the objective of S.C.R. 51(3) has been met and a waiver of the rule may be appropriate." Bennett vs. State Bar, (1987), 103 Nv. 519, 522

This Court has previously accepted satisfactory performance in an ABA approved program as evidence of functional equivalence. In the case of In re Clipperton, No. 18030 (1987), relating to University of London legal education, Clipperton was required to enroll as a regular or special student and take twelve units for two semesters at an ABA accredited school. Certainly, successful completion of 26 units of graduate legal education in a program approved by the ABA by a graduate of a unaccredited law school will produce a practitioner of law with the same or superior qualifications as the graduate of a foreign law school taking only 12 units of law school education in an ABA accredited program.

> "On the other hand, we must ensure that applicants are treated fairly and that any qualification for admission to the bar "must have a rational connection with the applicant's fitness or capacity to practice law" (citation omitted). Accordingly, we have recognized

exceptions and waived the application of S.C.R. 51(3) "whenever it can be demonstrated that the rules operate in such a manner as to deny admission to a petitioner arbitrarily and for a reason not related to the essential purpose of the rule."

Bennett vs. State Bar, 103 Nev. 519, 522 (1987)

S.C.R. 51(3) certainly has no rational connection with the fitness or capacity to practice law of an applicant that has successfully completed a Master of Laws program at an ABA accredited school. Indeed, almost every other state that still maintains the ABA graduation requirement recognizes a Master of Law degree from an ABA approved program as constituting compliance with the ABA requirement. Indeed, most all jurisdictions disregard the ABA graduation requirement as moot and irrelevant for applicants who have been practicing law for five to 10 consecutive years.

SUMMARY: The completion of the Master of Laws (Tax) Program at Golden Gate University with a 3.29 grade point average by Petitioner constitutes sufficient evidence to sustain Petitioner's burden of proof to establish that your Petitioner received the functional equivalent of an A.B.A. education.

VII

RULE 51(7)(c) REQUIRING AN APPLICANT TO SUSTAIN THE BURDEN OF PROOF REGARDING BOTH THE QUALITY OF THE EDUCATION OFFERED BY THE LAW SCHOOL AND THE QUALITY OF THE EDUCATION ACTUALLY RECEIVED BY PETITIONER IS AN UNCONSTITUTIONAL VIOLATION OF DUE PROCESS

"Stated another way, if an applicant proves to this Court that the education received at a law school not accredited by the ABA is nonetheless functionally equivalent to an education provided at an ABA approved school, and the applicant has otherwise complied with all the

requirements of the law relative to admission to the State Bar of Nevada, the objective of S.C.R. 51(3) has been met and a waiver of the rule may be appropriate." Bennett vs. State Bar, (1987), 103 Nv. 519, 522

Rule 51(7)(c) complies with this objective in part, as follows:

"The burden shall be on the applicant to demonstrate, without imposing an excessive burden on the court or the bar, (1) that the applicant otherwise complies with all the requirements for admission to practice;

(2) that the education received at the law school not accredited in accordance with Section 3 of this rule is nonetheless functionally equivalent to an education provided at an ABA approved school...."

However, once petitioner has complied with the requirements personal to the petitioner, Rule 51(7)(c) imposes the additional burden that petitioner establish the following about the law school:

"and that the law school substantially conforms to the accreditation standards of the Accreditation Committee for the Section of Legal Education and Admissions of the ABA; and that the adverse determinations, if any, of the Accreditation Committee are based on findings that are not rationally connected to the graduates' fitness and capacity to practice law and the quality of the legal education provided at the law school."

Once an applicant establishes that he has the functional equivalent of an A.B.A. education, the quality of the law school becomes moot and irrelevant. The purpose of Rule 51(7)(c) is to "promote high standards of competence among members of the State Bar of Nevada" (Bennett vs. State Bar, supra), not to exclude qualified applicants. An applicant can show compliance with rule 51(3) by offering

evidence **either** of the quality of the law school or the education received by the Petitioner. Requiring an applicant to establish **both** the quality of the education received **and** the quality of the education offered does not achieve the objective to "promote high standards of competence among members of the State Bar of Nevada"; it only operates to "deny admission to a petitioner arbitrarily and for a reason unrelated to the essential purpose of the rule." (Bennett vs. State Bar, supra).

COMMENT: Your Petitioner has sustained his burden of proof by introducing substantial evidence to the Committee and this Court to show that the education received by your Petitioner was in fact the functional equivalent of the education provided at an ABA approved school. Therefore, whether Petitioner can prove that 28 years ago the University of West Los Angeles substantially conformed to the accreditation standards of the ABA in existence 28 years ago is not relevant to determining the qualifications of your Petitioner. Once your Petitioner satisfies the goal of this Court to "promote high standards of competence among members of the State Bar of Nevada" (Bennett vs. State Bar, supra) by sustaining his burden of proof through introduction of substantial evidence proved that "the education received at a law school not accredited by the ABA is nonetheless functionally equivalent to an education provided at an ABA approved school . . . the objective of S.C.R. 51(3) has been met and a waiver of the rule may be appropriate" (Bennett vs. State Bar, supra).

VIII

S.C.R. 70.5 ESTABLISHING CONFIDENTIALITY OF OPINIONS ON PETITIONS UNDER RULE 57(1)(f) IS A DENIAL OF DUE PROCESS TO PETITIONER

Petitioner was advised by the State Bar of Nevada that this Court ruled in January, 1994 that "the operation of S.C.R. 51(3) should not exclude qualified applicants arbitrarily for reasons unrelated to the essential purpose of

this rule, nor on a basis that has no rational connection with his/her fitness to practice law in this state". Based on this ruling, Petitioner was advised by the State Bar of Nevada that the Committee on Functional Equivalence would consider "admission in other jurisdictions; legal practice subsequent to law school graduation; current standing in other jurisdictions; additional legal education; lecturing or teaching at legal institutions; and any other areas deemed relevant". Petitioner requested copies of this decision from both the State Bar of Nevada and the Clerk of the Nevada Supreme Court. The State Bar of Nevada refused to provide a copy of the decision because the opinion was not ordered published by this Court and the identity of the applicant was protected by S.C.R. 70.5. The Clerk of the Nevada Supreme Court also refused to provide a copy of the decision under Rule 70.5, and further advised that without the name of the applicant the Clerk would be unable to locate the opinion in any event.

Procedural due process requires that the proceedings be fair. By changing the evidence that may be introduced under S.C.R. 51(7)(c) to justify a waiver of S.C.R. 51(3)and not providing adequate notice to applicants of the change, the proceedings are rendered unfair and violation the due process requirements of the United States Constitution.

COMMENT: The hearing process violated your Petitioner's right to due process because Petitioner was not adequately notified of the nature and character of evidence that was acceptable for seeking a waiver of S.C.R. 51(3).

IX

THE HEARING PROCESS UTILIZED BY THE COMMITTEE VIOLATES PETITIONER'S RIGHT TO DUE PROCESS IN THAT THE COMMITTEE INTENTIONALLY FAILED TO GIVE ADEQUATE NOTICE THAT THE ADMISSIBLE EVIDENCE UNDER S.C.R. 51(7)(c) HAD BEEN CHANGED BY THE COURT IN JANUARY, 1994 AND SELECTED ONLY PORTIONS OF THE EVIDENCE AT THE HEARING

TO SUPPORT A DECISION WHICH HAD BEEN MADE WELL IN ADVANCE OF THE HEARING

The first communication received from the State Bar of Nevada dated November 17, 1993 set forth the material the Committee on Functional Equivalence wanted to consider. A copy of this letter is attached to this Petition, marked Exhibit A.

On February 18, 1994 (18 days before the hearing date of March 9, 1994) Petitioner received a second letter from the Committee on Functional Equivalence. A copy of this letter is attached to this Petition, marked Exhibit B. Exhibit B repeats the content of Exhibit A, and, on page two, contains a lengthy paragraph advising an applicant to bring additional items. However, this letter does **not** communicate to the applicant that the Court has recently ordered the committee to consider these additional factors, and this letter does not communicate to the applicant the rationale behind the Court's order. Indeed, **NONE** of the other seven applicant's to the Committee understood that this paragraph on page two reflected a new order by the Court. Frankly, the only reason your Petitioner noticed the change was because an employee of the State Bar of Nevada had verbally explained the change to Petitioner prior to receipt of the letter.

Your Petitioner asserts that Exhibit B constitutes evidence that the Committee on Functional Equivalence intentionally and deliberately sought to deny all seven applicants substantive and procedural due process in their hearings. The opposition of the State Bar of Nevada to admission of graduates of California non-ABA accredited law schools is well documented (Bennett vs. State Bar, 103 Nev. 519, 526 (1987). The Committee of Functional Equivalence, composed of seven outstanding Nevada Attorneys, certainly must collectively know how to give adequate notice, and their failure to do so can only be attributed to an intent to deprive the applicants of a fair

hearing process.

The prejudice of the Committee on Functional Equivalence is further demonstrated by the findings in the case of your Petitioner and in the case of the Petition of Michael Lynn Gabriel. The Report of the Committee does not reflect the evidence presented by either Petitioner. The Report of the Committee ignores any fact or any issue that does not support the decision arrived at. In several instances, the Report of the Committee actually misrepresents the evidence presented. The Report of the Committee is a report of a judicial body that has already made its decision in advance of hearing the facts, and is merely using the evidence gathering process to pick and choose those facts which will support is pre-determined decision.

One of your Petitioner's witnesses, GERALD A. SMITH, made the following observation of the committee on Functional Equivalence:

"Clark, their job is to keep people out, and in your case they just don't know how to do it."

X

THE COMMITTEE ON FUNCTIONAL EQUIVALENCE VIOLATED DUE PROCESS BY ADDRESSING QUESTIONS OF FITNESS AND CHARACTER WITHOUT ADEQUATE NOTICE TO PETITIONER

The notices issued to Petitioner (Exhibits A and B to this Petition) give absolutely no notice that the Committee is going to investigate the Character and Fitness of the Petitioner. Indeed, the clear meaning of these letters is that the Committee was going to investigate the Functional Equivalence of the Petitioner. Furthermore, Petitioner had no advance notification that the letterheads would be an issue, and no opportunity to prepare any defense with respect thereto.

At the commencement of the hearing, the Chairperson asked routine questions respecting whether Petitioner was prepared to proceed on both functional equivalence and character and

fitness. At no time did the Chairperson advise Petitioner in advance of the hearing or as part of the initial inquiry that the letterheads would be the subject of substantial inquiry. Petitioner indicated that he was prepared to proceed on functional equivalence and indicated that he was prepared to proceed on character and fitness **because** petitioner had received no advance notification that the character and fitness phase of the hearing would involve any issues out of the ordinary. Petitioner had just been cleared on the issue of Character and Fitness by the State Bar of Washington and the National Conference of Bar Examiners, so Petitioner had no reason to believe that the character and fitness phase of the examination would involve any new issues.

The Committee on Functional Equivalence spent at least half of the hearing unsuccessfully trying to trick Petitioner or one of his witnesses to testify that Petitioner had been practicing law in the State of Nevada without a license. Unable to find any evidence to sustain this contention, the Committee repeatedly questioned Petitioner about his letterheads.

Petitioner maintains an office at 1212 South Casino Center Blvd., Las Vegas, Nevada where he practices law in California and in Texas. While Nevada rules require that a Petitioner actually maintain an office within the State, neither Texas nor California have similar rules. While few California or Texas attorneys would receive substantial legal business at an office maintained in Nevada, your Petitioner does in fact receive substantial business at his Las Vegas office of clients from both California and Texas.

Your Petitioner uses several letterheads, **EACH** of which clearly states that Petitioner is admitted in California and in Texas. The Committee was convinced that this letterhead could be misleading, but the Committee failed to find any instance when it was in fact misleading

to **ANYBODY!**

Your Petitioner structured the letterhead in compliance with the Texas Rules of Professional Conduct, which are modeled after the ABA Model Code of Professional Conduct. Your Petitioner selected the Texas rules because California does not have any rules on the subject of letterhead content. The Texas rule is as follows:

> "(b) A firm with offices in more than one jurisdiction may use the same name in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located." Texas Disciplinary Rules of Professional Conduct, Rule 7.01 FIRM NAMES AND LETTERHEADS

All of Petitioner's letterheads are in compliance with this rule in that the name of every attorney identified on a letterhead is followed by the jurisdictions in which that attorney is admitted to practice.

Members of the Committee stated that the letterhead should have stated that Petitioner was not admitted to practice in Nevada. However, the ABA Rules of Professional Conduct and the Texas Rules of Professional Conduct do not require such verbiage. Indeed, such verbiage would probably also be confusing, as most attorneys are used to seeing disclosures in conformity to the ABA code and understand the meaning of letterhead printed in conformity with the ABA code. Your Petitioner provided the letterheads to the Committee as part of the exhibits introduced to establish his legal practice subsequent to law school, and the letterheads are party of the Relevant Documents filed separately herewith. It is clear from examination of the letterheads that no person has in fact been misled or deceived! Your Petitioner was unable to cite the foregoing legal authority at the time of the hearing for

the letterheads because he received no advance notice that the letterheads would be an issue.

Irrespective of the fine points of letterhead verbiage, the letterhead use considered by the committee is insufficient to establish any cause for denial of admission on issues of character and fitness. Your petitioner has been licensed as an attorney since January 5, 1972, and has **never** been the subject of any discipline by **any** bar of which he is a member. The purpose of the character and fitness rules is to protect members of the public, the bar, and the courts from dishonest attorneys, and the unblemished record of your Petitioner is certainly is sufficient evidence to overcome any questions raised by the letterheads.

Your petitioner asserts that the Committee's pre-occupation with the letterheads, coupled with the inaccuracy of the findings, is further evidence that the Committee on Functional Equivalence intentionally deprived your petitioner of due process by pre-determining the result of the hearing in advance. Furthermore, your petitioner asserts that the Committee's failure to give adequate notice is further evidence of the deprivation of procedural and substantive due process.

XI

UNDER THE PRINCIPLE OF COMITY, THIS COURT IS OBLIGATED TO RECOGNIZE THE ACCREDITATION OF THE UNIVERSITY OF WEST LOS ANGELES BY THE STATE BAR OF CALIFORNIA

This issue was recently addressed by the Arizona Supreme Court in the case of Application of McCartney, 786 Pac. Rptr. 2d 967 (1990). The Petitioners, graduates of Nevada School of Law Old College, applied to take the Arizona Bar Examination. The Arizona Supreme Court applied the doctrine of comity based on the following reasoning:

"We recognize, however, the principle that courts of one jurisdiction should "give effect to the laws and judicial decisions of another state or jurisdiction, not as a matter of obligation, but out of deference and mutual respect." (citations omitted). The doctrine of comity may be applied, at this court's discretion, even where the full faith and credit clause does not apply. (citations omitted).

The court's order and its opinion in Bennett are not based on generalized statements, but on detailed findings and conclusions made after thorough investigation and the taking of evidence, as well as the court's personal observations of the quality of education at the school. Nevada's rule requiring accreditation is similar to ours. Therefore, we believe principles of comity require us to give weight to the Nevada court's finding that the education petitioners received at Old College was functionally equivalent to the education they would have received at an ABA accredited school."

Application of McCartney, 786 Pac 2d 967, '970 (1990)

Petitioner has attached the criteria for accreditation by the State Bar of California as Exhibit C to this Petition. Petitioner submits that Nevada is obligated, under the doctrine of comity, to give effect to the laws and judicial decisions of California by accepting the accreditation of the University of West Los Angeles, School of Law by the California State Supreme Court and the State Bar of Nevada.

XII

THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION REQUIRES THAT NEVADA GIVE FULL FAITH AND CREDIT TO THE ACCREDITATION OF THE UNIVERSITY

OF WEST LOS ANGELES BY THE STATE OF CALIFORNIA

Petitioner concedes that there are no reported cases on this issue other than the Arizona case of Application of McCartney, supra, which rejected this contention while agreeing that the doctrine of comity required Arizona to recognize the Nevada Supreme Court ruling.

All of the reported cases deal with the issue one state giving full faith and credit to the admission of an attorney to practice by another state. This issue has been thoroughly litigated and rejected by virtually all levels of the judiciary, in large part because the applying attorney was unable to pass the bar examination in the new state.

Your petitioner concedes that the basis of these rulings is sound. For example, the court held as follows in the case of Giannini vs. Real, 911 F. 2d 354, 360 (1990):

> "Giannini also asserts that retesting of out-of-state attorneys violates the Full Faith and Credit Clause. The Full Faith and Credit Clause provides that: "Full Faith and Credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State." U. S. Const., Art. IV, Sec. 1. Giannini's claim lacks merit because no act, record, or judicial proceeding in New Jersey or Pennsylvania states that Giannini is entitled to practice law in California."

Your Petitioner asserts that the rationale of these rulings does not apply to the Full Faith and Credit Clause in connection with California's accreditation of a California Law School. The Full Faith and Credit Clause of the United States Constitution requires Nevada to recognize the prior acts, Records, and Judicial Proceedings of California, including the accreditation of the University of West Los Angeles, School of Law by the State of California. Indeed, the reasoning of Giannini supports this claim. While there was no act,

record, or judicial proceeding in New Jersey or Pennsylvania that entitled Giannini to practice law in California, there was an act, record, or judicial proceeding in California that entitled Petitioner to attend Law School at the University of West Los Angeles, School of Law. While Petitioner concedes that there are no legal precedents in support of this position, there are also no legal precedents that reject this position either.

XIII
CONCLUSION

Your petitioner has clearly shown that S.C.R. 51(3) as applied to Petitioner operates in a manner as to deny admission to Petitioner arbitrarily and for a reason unrelated to the essential purpose of the rule, which is to promote high standards of competence among members of the State Bar of Nevada.

Furthermore, it is apparent that S.C.R. 51(3) has become a subject of political struggle between the State Bar of Nevada and the Court. The State Bar of Nevada has consistently opposed all waivers of S.R.R. 51(3), and, at least in this case, appears to have intentionally disregarded the previous instructions of this Court on the method to evaluate applications for waiver of S.C.R. 51(3). Petitioner urges the Court to abandon Rule 56(7)(f) as being unworkable because of the unwillingness of the State Bar of Nevada to follow the instructions of this Court. S.C.R. 56(7((f) as it is currently being implemented by the State Bar of Nevada constitutes a denial of due process because the State Bar of Nevada is not functioning as an impartial trier of fact in these proceedings but instead is acting as an advocate to deny admission to graduates of unaccredited California law schools, irrespective of their qualifications.

Your Petitioner urges this Court to instead adopt alternative rules which will relieve the Court and the Bar of the burden of functional equivalency hearings. The time and expense

required to obtain a Master of Law degree from an A.B.A. approved program at an A.B.A. approved law school is significantly less than the time and expense required to obtain a waiver of S.C.R. 51(3). Accordingly, were this Court to amend S.C.R. 51(3) to provide that attaining a Master of Laws Degree from an A.B.A. approved program at an A.B.A. approved law school constitutes demonstration that the applicant possesses the functional equivalent degree of a law degree from an A.B.A. approved law school (as most other states now do), this Court will achieve the objectives of Rule 51(3) and also be able to avoid further functional equivalency proceedings by effectively delegating the duty to A.B.A. approved law schools with Master of Law programs.

W H E R E F O R E, your Petitioner respectfully requests relief under S.C.R. 56(1)(f) and that this Court direct the Board of Bar Examiners to process Petitioner's application in accordance with S.C.R. 57 to S.C.R. 75.

Dated this 25th day of April, 1994

/s/ CLARK GAREN

CLARK GAREN, PETITIONER,
APPEARING IN PRO PER,
P. O. BOX 94498,
LAS VEGAS, NEVADA 89193-4498
(702) 435-7335

VERIFICATION BY PARTY

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

I am the Petitioner in the above-entitled action; I have read the foregoing VERIFIED PETITION UNDER S.C.R. 57(1)(c) FOR WAIVER OF S.C.R. 51(3) and know the contents thereof; and I certify that the same is true of my own knowledge.

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER NAMED IN THE FOREGOING VERIFIED PETITION UNDER S.C.R. 57(1)(c) FOR WAIVER OF S.C.R. 51(3) AND KNOWS THE CONTENTS THEREOF; THAT THE PLEADING IS TRUE OF HIS OWN KNOWLEDGE, EXCEPT AS TO THOSE MATTERS STATED ON INFORMATION AND BELIEF, AND THAT AS TO SUCH MATTERS HE BELIEVES IT TO BE TRUE.

EXECUTED ON APRIL 25, 1994 AT LAS VEGAS, NEVADA

/s/ CLARK GAREN

CLARK GAREN, DECLARANT

PROOF OF SERVICE BY MAIL

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1212 South Casino Center Blvd., Las Vegas, Nevada 89104

On April _____, 1994, I served the within VERIFIED PETITION UNDER S.C.R. 57(1)(c) FOR WAIVER OF S.C.R. 51(3) in accordance with S.C.R. 56(1)(F) on the Admissions Director of the State Bar of Nevada and on the Chairman of the Board of Bar Examiners of the State Bar of Nevada by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Stateline, Nevada addressed as follows:

ADMISSIONS DIRECTOR,
STATE BAR OF NEVADA,
201 LAS VEGAS BLVD., SOUTH,
SUITE 200,
LAS VEGAS, NEVADA 89101

CHAIRMAN OF THE
BOARD OF BAR EXAMINERS,
STATE BAR OF NEVADA
201 LAS VEGAS BLVD., SOUTH,
SUITE 200,
LAS VEGAS, NEVADA 89101

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON APRIL _____, 1994 AT LAS VEGAS, NEVADA

/s/ MARY E. FITZPATRICK

MARY E. FITZPATRICK,
DECLARANT

STATE BAR OF NEVADA

Reply to [ ] Reno [x] Las Vegas

November 15, 1993

Clark Garen
P.O. Box 94441
Las Vegas, NV 89193

RE: Pending Petition for Waiver of S.C.R. 51(3)

Dear Mr. Garen:

The Supreme Court of Nevada and the Board of Governors for the State Bar of Nevada are in the process of appointing members to the Equivalency Committee, which the Court recently created. The new Committee will consider your petition for waiver of S.C.R. 51(3). As part of the petitioning process you will be notified of the date for a hearing, at which time you will be allowed to address the Committee. Pursuant to S.C.R. 51(7)(c), you carry the burden of proof to demonstrate that your school complies with the mandates of S.C.R. 51(7).

In an effort to provide you with guidance as to the Committee's expectations, possible areas of inquiry are addressed in this letter. This list is not exhaustive and is provided only to assist you in determining a minimum requirement of evidence that will be expected by the Committee at your hearing. Please provide to the State Bar of Nevada, at your earliest convenience, evidence addressing the following items:

1. Quality of Law School (for example; profit vs. non-profit, correspondence vs. attendance, etc.)

2. Curriculum (for example; courses taken, content, common law subjects, length of classes for individual sessions and over a semester or other term, participation required, moot court, etc.)

3. Faculty (for example; number of full-time faculty members, faculty/student ratio, professional credentials, availability of members to students after class, etc.)

4. Admission Standards (for example; requirement of L.S.A.T. or equivalent, average G.P.A., B.A./B.S. required or A.A. acceptable, number of students in individual classes in school, etc.)

5. Resources and Research Facilities (for example; library facility, number of volumes in library, types of volumes in library, study facilities, etc.)

6. Physical Plant (size, classroom size, moot court facilities, offices for faculty, seperation of law school from general university, etc.)

7. Existing Accrediation, Prior Accrediation History or Attempt (for example; prior A.B.A. accrediation or provisional accrediation, attempt at A.B.A. accrediation, accrediation of foreign law school by agency analogous to A.B.A., etc.)

The above listing is illustrative of the items that the Committee will consider in determining the functional equivalency of your law school but is not intended to be exhaustive. You may wish to consult the American Bar Association Standards for Approval of Law Schools for additional items to be considered by the Board in its determination.

Please supply your brief to me at the State Bar setting forth your arguments for "functional equivalency" and the evidence you intend to present to the Functional Equivalency Committee as soon as possible. You may submit any additional evidence obtained after that date either to me for advance distribution to the Committee or at the hearing on your petition.

Since it will not be possible for the Equivalency Committee to review the materials you have yet to submit, conduct a hearing, and prepare its recommendation to the Supreme Court in the time required by S.C.R. 51(7)(a), I ask that you complete the enclosed stipulation extending time for the report to be submitted to the Supreme Court.

Sincerely,

Roger A. Jones
Director of Admissions

STATE BAR OF NEVADA

Reply to [ ] Reno [x] Las Vegas

February 18, 1994

Clark Garen
P.O. Box 94441
Las Vegas, NV 89193

RE: WAIVER OF SCR 51(3)

Dear Mr. Garen:

On January 10, 1994, the newly created Committee on Functional Equivalency met to discuss the status of all pending applications for waiver of SCR 51(3). They have tentatively scheduled March 8 and 9, 1994 as dates for a hearing regarding same, at which time you will be allowed to address the Committee. As required by SCR 51(7)(c), you carry the burden of proof to demonstrate that your school complies with the mandates of SCR 51(7). In preparation for your hearing, the Committee asks that you submit your Petition and any additional materials pertaining to your application no later than January 31, 1994.

On two previous occasions, you were sent informational correspondence containing a list of the minimum areas of inquiry designed to give you guidance as to the Committee's expectations. The following list is duplicative of the information previously provided to you.

1. Quality of Law School (for example; profit vs. non-profit, correspondence vs. attendance, etc.)
2. Curriculum (for example; courses taken, content, common law subjects, length of classes for individual sessions and over a semester or other term, participation required, moot court, etc.)

3. Faculty (for example; number of full-time faculty members, faculty/student ratio, professional credentials, availability of members to students after class, etc.)
4. Admission Standards (for example; requirements of L.S.A.T. or equivalent, average G.P.A., B.A./B.S. required or A.A. acceptable, number of students in individual classes and in school, etc.)
5. Resources and Research Facilities (for example; library facility, number of volumes in library, types of volumes in library, study facilities, etc.)
6. Physical Plant (size, classroom size, moot court facilities, offices for faculty, separation of law school from general university, etc.)
7. Existing Accrediation, Prior Accrediation History or Attempt (for example; prior A.B.A. accrediation or provisional accrediation, attempt at A.B.A. accrediation, accrediation of foreign law school by agency analogous to A.B.A., etc.)

Upon submission of you materials, it is the responsibility of the Committee to review and conduct any further investigation they deem necessary. In addition to the areas of inquiry listed above, the operation of SCR 51(3) should not exclude qualified applicants arbitrarily for reasons unrelated to the essential purpose of this rule, nor on a basis which has no rational connection with his/her fitness to practice law in this state. Therefore, the Committee has needs to know the following: admission in other jurisdictions, legal practice subsequent to law school graduation, current standing in other jurisdictions, additional legal education, lecturing or hearing the Committee shall make a recommendation to the Supreme Court of Nevada based upon the materials you provide. The Court maintains inherent and exclusive power to control admissions to the professional bar of this state and a final determination of your admissions must be so ordered.

To further assist the Committee in the preparation of your hearing, you must submit the following information no later than January 31, 1994: a) Whether or not you intend to be represented by Counsel; b) Whether or not you intend to have witnesses testify on your behalf, (if so, list their complete names, addresses, and a brief summary of their expected testimonies); and c) An estimate of the amount of time required for your hearing. Any additional affidavits or exhibits to be introduced at your hearing must be submitted no later than twenty (20) days before the hearing date.

Official Notice of Hearing will be sent to you at a later time. If you maintain a preference of the dates selected please contact me immediately. If you do not cotact me, the Committee will choose a date for you and you will be expected to appear on that date. The hearings will be held in the Las Vegas Office of the State Bar of Nevada (address listed below). If you have any further questions or comments on this subject, please do not hesitate to contact me.

Sincerely,

/s/ DEENA R. TRUEBLOOD
Deena R. Trueblood
Asst. Director of Admissions

DRT/jd

cc: Janette Bloom, Clerk of the Supreme Court

APPENDIX "F"

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: ADMISSION OF CLARK GAREN TO PRACTICE LAW IN NEVADA) No. 25545

FILED
JUNE 17, 1994

JANETTE M. BLOOM,
CLERK OF THE SUPREME COURT
BY: J. RICHARDS
CHIEF DEPUTY CLERK

ORDER GRANTING PETITION

Petitioner Clark Garen seeks a waiver of SCR 51(3), the rule requiring that all applicants for admission to practice law in this state must have received a bachelor of laws degree, or an equivalent degree, from a law school approved by the American Bar Association (ABA).

In 1971, petitioner received a J.D. from the University of West Los Angeles School of Law (UWLA), a law school unaccredited by the ABA. In 1993, petitioner received an LL.M. in taxation from Golden Gate University, a law school accredited by the ABA. Petitioner has practiced law in California for the last twenty-three years, primarily as a sole practitioner. Petitioner is also admitted to practice law in Texas and has never been professionally disciplined in either California or Texas. Petitioner has further served on the California Judicial Forms Committee and as a judge pro tempore in Los Angeles Municipal Court.

On April 5, 1994, following an investigation and hearing, the Committee on Functional Equalency of the State Bar of Nevada filed in this court its written report, recommending that this court deny this petitioner. See SCR 51(7)(a). The Committee concludes that petitioner had not met his burden

of proving: (1) that the education he received from UWLA was functionally equivalent to one provided by an ABA accredited law school; (2) that the work he completed to receive his LL.M. was the functional equivalent of the course work required by an ABA accredited law school in order to receive a J.D. or its equivalent; and (3) that his education, training, experience, and practice as a California attorney justified a waiver of SCR 51(3).

This court has an "obligation to ensure that the application of Rule 51(3) does not exclude qualified applicants on a basis which has no rational connection with [the applicant's] fitness to practice law in this state." In re Nort, 96 Nev. 85, 90, 605 P.2d 627, 631 (1980). Having reviewed the record and the documents before this court, we agree with the Committee that petitioner did not demonstrate that he received the functional equivalent of an education provided by an ABA accredited law school at UWLA. We further agree that an LL.M. is not, as a matter of law, "equivalent" to a bachelor of laws degree from an ABA-accredited law school. See Teare v. Committee on Admissions, 566 A.2d 23 (D.C. 1989) (receipt of an LL.M. alone does not establish that the recipient has been awarded a degree which is the equivalent of a J.D. or LL.B. by an ABA approved school); Florida Bd. of Bar Examiners In Re Hale, 433 So.2d 969 (Fla. 1983) (a graduate degree in law will not be accepted in lieu of a first degree in law from an accredited school).

Nevertheless, our review of the record reveals that petitioner presented substantial, unrebutted evidence that his UWLA education has been satisfactorily augmented and reinforced by additional education and experience. Therefore, we conclude that petitioner has demonstrated that strict application of SCR 51(3) in this instance would exclude petitioner from admission on a basis that has no rational relation to his qualifications and fitness to practice law in

this state.

Accordingly, we reject the recommendation of the Committee, and we grant petitioner's request for a waiver of SCR 51(3). However, because of concerns raised by the Committee on Functional Equivalency, which are also presented by the record, we refer petitioner to the Committee on Moral Character and Fitness for consideration of petitioner's moral and ethical fitness to practice law in this state. We defer to the board's discretion the question of whether Garen shall be permitted to sit for the July 1994 Nevada Bar Examination pending the board's completion of any further investigtions and hearings respecting Garen's moral character. See SCR 56(3).

It is so ORDERED.

/s/ ROSE, C.J.
Rose

/s/ STEFFEN, J.
Steffen

/s/ YOUNG, J.
Young

/s/ SPRINGER, J.
Springer

/s/ SHEARING, J.
Shearing

cc: Leonard I. Gang, Bar Counsel
Ron Alling, Cahirman,
Board of Bar Examiners
Roger Jones, Admissions Director
Thomas D. Beatty, Chairman,
Committee on Functional Equivalency
Keith L. Lee, Chairman,
Committee on Moral Character and Fitness
Rosalie Small, Executive Director
Clark Garen

APPENDIX "G"

STATE BAR OF NEVADA
REPLY TO ___ RENO ___ LAS VEGAS

June 30, 1994

Clark Garen
P. O. Box 94441
Las Vegas, NV 89193

Dear Mr. Garen:

As you know, the Nevada Supreme Court has determined that you have received a functionally equivalent legal education to that of an ABA approved law school. Pursuant to the Supreme Court Order determining that your legal education was functionally equivalent, the Committee on Character and Fitness has placed a character and fitness hold on you. The primary concerns of the Committee on Character and Fitness are whether you have engaged in the unauthorized practice of law in the state of Nevada and the candor with which you discussed, under oath, your relationship with a Las Vegas attorney with the Functional Equivalency Committee.

It is our intention to have a hearing in August, before the examination results are finalized. You will be given at least then (10) days notice of the hearing. Pursuant to SCR 54(6), you will be required to deposit the sum of Seven Hundred Fifty Dollars ($750.00) with the State Bar of Nevada, prior to the hearing. Your failure to pay this sum may be considered as a basis for denial of your application.

Please understand that, if you take the examination and pass it, you have no vested right to be admitted to practice in Nevada. You must still clear the character and fitness hold. Consequently, yo may wish to withdraw your application pursuant to SCR 56(4) prior to the

examination. If you choose to withdraw, no further action will be taken on a determination of your character and fitness unless and until you file a new application for a future examination. In that event, the character and fitness investigation will continue.

If you have any questions, please do not hesitate to contact Roger A. Jones, Director of Admissions.

Very truly yours,

/s/ KEITH L. LEE
Keith L. Lee
Chairman
Committee on Moral Character and Fitness

KLL/km
cc: Roger A. Jones

THE STATE BAR OF NEVADA
BEFORE THE COMMITTEE ON
MORAL CHARACTER AND FITNESS

IN THE MATTER OF CLARK GAREN

NOTICE OF HEARING

YOUR ARE HEREBY NOTIFIED in accordance with the provisions of SCR 59 that a hearing in the above-referenced matter will be conducted by the Committee on Moral Character and Fitness (Committee) on Friday, August 19, 1994 at 9:00 a.m. in the office of the State Bar of Nevada, 201 Las Vegas Blvd., S., Ste. 200, Las Vegas, Nevada 89101

SCOPE OF HEARING: Including, but not limited to, the unauthorized practice of law in the State of Nevada and other such matters that may reflect on your character and fitness for the practice of law.

PROCEDURE: Since the burden is on you to establish that you are fit to practice law in this state, you are entitled to have counsel of your choosing present at the hearing; you may make an opening statement; and you may offer such witnesses and present such other evidence as you desire. You, and any other witnesses you call, will be subject to examination by members of the Committee. You may request the Committee to issue subpoenas. Any request for a subpoena must be made to the Committee through the Director of Admissions not later than then (10) days before the date set for the hearing.

PRE-HEARING BRIEF: The Committee on Moral Character and Fitness suggests that if you have any documents to be submitted, including a pre-hearing brief, that you send them to the Director of Admissions (one original and eight copies) at least five (5) days before the hearing.

ESTIMATION OF COSTS: Pursuant to Supreme Court Rule 54(6) the Committee on Moral Character and Fitness has determined that the estimate of costs to conduct your hearing will be $750.00 which includes travel, lodging, and per diem for the members of the Committee, court reporting services, and reproduction of materials for Committee members.

This estimate of costs may be amended pursuant to SCR 54(6) and any amounts paid by the Petitioner and not utilized by the Committee will promptly be refunded.

Pursuant to SCR 54(6), you shall have 10 days from service of this estimate of costs to pay the same to the State Bar of Nevada, 201 Las Vegas Boulevard South, Suite 200, Las Vegas, Nevada 89101.

Failure to pay these costs may be considered grounds for denial of admission (SCR 54(6)).

BY ORDER of the Committee on Moral Character and Fitness, State Bar of Nevada, whose office is at 201 Las Vegas Boulevard South, Las Vegas, Nevada 89101.

DATED this 5th day of July, 1994.

/s/ ROGER A. JONES
ROGER A. JONES
Director of Admissions,
State Bar of Nevada

APPENDIX "H"

COMMITTEE ON MORAL CHARACTER & FITNESS
SUMMARY OF HEARING

Applicant Name: Clark Garen

Date of Hearing: August 19, 1994

Present at Hearing: Clark Garen; Keith L. Lee, Esq.; David R. Grundy, Esq.; Kathleen J. England Esq.; Michael S. Rowe, Esq.; John R. Bailey, Esq.; Roger A. Jones, Esq.

Counsel for Applicant: None

Adequate Notice? Yes
If no, was deficiency waived?

Committee on Moral Character & Fitness Recommendation:

The applicant has failed to demonstrate that he is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors of law in the State of Nevada as required by SCR 51(4); and, therefore, the Committee recommends that the applicant be denied admission to practice law in the State of Nevada.

AREAS OF INQUIRY

_____ Academic Disqualification or Suspension

_____ Employment History

__X__ Professional Discipline

_____ Military Record/Security Clearance

_____ Crimes

_____ Litigation

__X__ Debts, Bankruptcy or Banking Problems

_____ Sealed Record

_____ Mental/Emotional Disorder

_____ Alcohol or Drug Abuse

__X__ Other - Unauthorized Practice of Law

FINDINGS OF FACT

Clark Garen received a juris doctor degree from the University of West Los Angeles School of Law, Culver City, California, in 1971. He earned an LL.M in taxation from Golden Gate University in 1993. He was admitted to the California State Bar in 1972 and the State Bar of Texas in 1985. He has practiced law in California for the past 23 years, primarily as a sole practitioner.

The University of West Los Angeles School of Law is not accredited by the American Bar Association (ABA). In 1993, the applicant petitioned for a waiver of SCR 51(3) which requires that all applicants for admission to practice law in the State of Nevada must have received a bachelor of laws or equivalent degree from a law school approved by the ABA. By order dated June 17, 1994, petitioner's request for a waiver was granted.

During the course of Mr. Garen's hearing before the Functional Equivalency Committee on April 5, 1994, questions arose indicating that the applicant might be involved in the unauthorized practice of law in Nevada. He also testified that he operated a 900 number commercial telephone business.

Because of questions raised at his Functional Equivalency hearing, the credit report obtained on the applicant, and information regarding complaints made against

him to the State Bar of California, the Committee on Moral Character and Fitness held a hearing on August 19, 1994. The applicant appeared and testified under oath on his own behalf. Because of an outstanding complaint against the applicant before the State Bar of California, the State Bar of California was unable to furnish a Certificate of Good Standing. The record of the hearing remained open until such time as the State Bar of California furnished the State Bar of Nevada a current Certificate of Good Standing on the applicant.

The evidence adduced at the hearing on August 19, 1994 established the following:

1. The applicant is a member of the State Bar of California and the State Bar of Texas.
2. The applicant claims a residency in Clark County, Nevada, at 3467 La Paloma in Las Vegas.
3. The applicant operates a computerized 900 number commercial telephone business out of the house at 3467 La Paloma.
4. The applicant does not have, and did not apply for, a business license with either the City of Las Vegas or Clark County to conduct the 900 number commercial telephone business.
5. It was unclear from the evidence adduced at the hearing whether or not a business license was and is required to Conduct the type of business that the applicant conducts from 3467 La Paloma address.
6. The applicant did make an anonymous inquiry with the Clark County business license authority to determine whether, based upon the information the applicant gave Clark County, a County Business license was required. After the anonymous inquiry, the applicant "got the idea that I didn't fit into any of the Categories." The applicant never did file an application with either the City of Las Vegas or Clark County business license divisions for a definitive determination of whether or not a business license was required. The applicant determined "...that what I was doing was not running a

business within the ordinary terms of the words of running a business..."

7. The applicant uses letterhead that has a Las Vegas address, Las Vegas phone number, and indicates that the applicant is an attorney at law. On that letterhead, above the printing of his name, is the following language: "Admitted to practice in California and Texas." There is no limiting language such as "Only Admitted" or "Not Admitted in Nevada" on the letterhead.

8. The applicant was unsure as to whom and when this letterhead was sent. It could have been sent "in connection with either my California or my Texas matters. It may have gone to my clients. It may have gone to counsel for opposing parties. It may have gone to courts." The applicant doesn't "remember sending it to anybody in the State of Nevada." The letterhead is attached as Exhibit "B" to the transcript of the hearing.

9. Seven complaints have been filed against the applicant with the State Bar of California. Three were filed in 1985, one in 1986, one in 1989, one in 1992, and one in 1993. The 1993 complaint was pending at the time of the hearing.

10. The applicant filed two bankruptcies in Texas (one Chapter 7 and one Chapter 11) because of the rapid decline in the real estate market in Houston, Texas, where he was an investor in an office building. The applicant was discharged pursuant to his bankruptcy filing.

11. A federal tax lien was filed against the applicant. The applicant testified that the federal tax lien has been satisfied.

12. A State of California tax lien was filed against the applicant. The applicant testified that the State tax lien has been satisfied.

13. Two Los Angeles County tax liens are presently lodged against the applicant. The tax liens are a result of the applicant's sale of two parcels of real property in California in 1990. The applicant challenged both liens through an intermediate appeal process to the

Assessment Appeal Board of the County of Los Angeles. One of the assessments was reduced from $276,000 to $232,000. The applicant did not seek judicial review of either of the final determinations of the Assessment Appeals Board of the County of Los Angeles. The applicant testified that he "had no intention of discharging or challenging the validity of the liens." He indicated that he was going to allow the liens to languish, and if he ever sold any other real property in California he would pay the liens at that time. He does not presently own any assets in Los Angeles County but expects to acquire assets through an inheritance.

From the foregoing findings, the Committee concludes the following:

1. The applicant was less than candid in dealing with the Clark County business licensing division in that he made an anonymous inquiry rather than filing an application for a business license to conduct his 900 number commercial telephone business from the house on La Paloma.

2. While the letterhead does not make it clear that the applicant is not licensed in Nevada, the ambiguity raised by it is not sufficient to conclude that he is participating in the unauthorized practice of law in the State of Nevada.

3. The seven complaints filed before the State Bar of California have all been concluded without adverse action having been taken against the applicant other than, in one instance, the issuance of Admonition and in another a Warning Letter (a Certificate of Good Standing was received by the State Bar of Nevada from the State Bar of California in early December 1994).

4. The bankruptcies were within the applicant's rights and he does not appear to have abused the bankruptcy process.

5. The federal and state tax liens, having been satisfied, are not sufficient to sustain an adverse recommendation.

6. The failure to satisfy the lawful tax liens in Los Angeles County and the applicant's

cavalier attitude toward them establish his utter disregard and disrespect for lawful process.

7. Failure to satisfy the Los Angeles County tax liens demonstrates, in itself, that the applicant has failed to carry the burden of establishing his fitness to practice law in the State of Nevada. The cumulative effect of the applicant's lack of candor in dealing with the Clark County business license division regarding his 900 number commercial telephone business and the use of his ambiguous letterhead establish that the applicant has failed to carry the burden of proving he is of proper character and fitness to practice law in the State of Nevada.

/s/ KEITH L. LEE
Keith L. Lee, Esq., Chair
Committee on Moral Character and Fitness,
State Bar of Nevada

APPENDIX "I"

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re the Application of: No._____

_____

CLARK GAREN,

Petitioner.

_____/

VERIFIED PETITION UNDER S.C.R. 64(21)

APPEALING FINDING BY STATE BAR OF NEVADA THAT

PETITIONER DOES NOT MEET REQUIREMENTS

OF S.C.R. 51(4)

CLARK GAREN,
ATTORNEY AT LAW,
P. O. BOX 6988,
STATELINE, NEVADA 89449-6988
(702) 435-7335
PETITIONER APPEARING
IN PRO PER

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ADDITIONAL EVIDENCE SUBMITTED AS EXHIBITS

EXHIBIT NUMBER:	DESCRIPTION OF EXHIBIT
1	DECLARATION OF JEROME FISHKIN:
2	DECLARATION OF ERIC DERENG
3	DECLARATION OF MARY McGEE

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This Verified Petition under S.C.R. 64(2) appealing finding by State Bar of Nevada that Petitioner does not meet the character and fitness requirements of S.C.R. 51(4) is filed by CLARK GAREN, your Petitioner appearing In Pro Per.

I

FACTUAL BACKGROUND

Your Petitioner has been a practicing attorney since January 5, 1972 in California and a practicing attorney in Texas since October 4, 1985. Your Petitioner has never been disciplined in over 23 years of the practice of law in two states, and your Petitioner has never had a client file a complaint with any bar association.

Your Petitioner filed a Petition under S.C.R. 70 for a waiver of S.C.R. 51(3) on April 27, 1993, which was denied without prejudice by this Court on May 28, 1993. A Notice of Intent to Seek a Waiver under Rule 51(7) was filed by your Petitioner on May 21, 1993. After hearing, the Committee on Functional Equivalency of the State Bar of Nevada recommended that a waiver of S.C.R. 51(3) be denied to your Petitioner. This Court overruled the Committee and granted Petitioner's request for a waiver of S.C.R. 51(3) on June 17, 1994.

Your Petitioner was permitted to take the July, 1994 Bar Examination and your Petitioner received a passing grade on both the Bar Examination and the M. P. R. E. Examination.

Pursuant to notice stating that the Committee was seeking to determine whether your Petitioner had engaged in the unauthorized practice of law in Nevada, the Committee on Moral Character and Fitness held a hearing on August 19, 1994. The following evidence was presented to the Committee during the hearing:

1. Your Petitioner used letterhead with a Nevada address that stated that your Petitioner was "Licensed in California and Texas". No evidence was presented that your Petitioner had engaged in the unauthorized practice of law in

Nevada. Based on the evidence, the Committee found as follows:

"While the letterhead does not make it clear that the applicant is not licensed in Nevada, the ambiguity raised by it is not sufficient to conclude that he is participating in the unauthorized practice of law in the State of Nevada."

2. Your Petitioner did not cause his Corporation to apply for a Clark County Business License to operate 900 numbers from his residence because, after investigation and inquiry, your Petitioner concluded no business license was required for the activity engaged in. Your Petitioner testified that the business consisted of a computer attached to incoming telephone lines, and resulted in no traffic, no employees, no parking issues, and no transaction of business in the residence other than the attachment of the computer to the telephone lines, which is a permitted residential activity. Based on the evidence, the Committee found as follows:

"It was unclear from the evidence adduced at the hearing whether or not a business license was and is required to conduct the type of business that the applicant conducts from the 3467 La Paloma address."

Nevertheless, the Committee went on to find:

"The applicant was less than candid in dealing with the Clark County business licensing division in that he made anonymous inquiry rather than filing an application for a business license...."

3. Your Petitioner stated that he did not pay outstanding property tax liens for ownership of real property to the County of Los Angeles, California. Based on the evidence, the Committee found as follows:

"The failure to satisfy the lawful tax liens in Los Angeles County and the

applicant's cavalier attitude toward them establish his utter disregard and disrespect for lawful process."

On January 6, 1995, the State Bar of Nevada served your Petitioner with written notice that the Committee found that your Petitioner failed to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys, and recommended that your Petitioner be denied admission to the State Bar of Nevada. The written notice provided by the State Bar of Nevada does not comply with S.C.R. 64(1) as amended by this Court on November 17, 1994, because it does not state whether the denial is with or without prejudice, and if it is without prejudice, what conditions are being imposed.

Your Petitioner now submits this Verified Petition for relief under S.C.R. 64(2).

II

ISSUES FOR CONSIDERATION

Your Petitioner requests relief from the findings of the Report of the Committee on Moral Character and Fitness of the State Bar of Nevada and an order granting his admission to practice law in Nevada pursuant to S.C.R. 64(2) on the following grounds:

1. The scope of the investigation by the Bar Association went beyond assuring that, if admitted, your Petitioner would not obstruct the administration of justice or otherwise act unscrupulously.
2. The findings of fact do not support the conclusion of the Committee because this Court has previously admitted applicants who have been convicted of crimes or engaged in other acts of moral turpitude; have engaged in conduct constituting a violation of the Nevada Rules of Professional Conduct; and have made misstatements on Nevada Bar Applications. Since the findings of fact are neither a crime or other act of moralturpitude, a violation of the Nevada Rules of

Professional Conduct, or a misstatement on the Nevada Bar Application, the finding of fact do not support the conclusion that your petitioner failed to demonstrate that he is of good moral character and willing to abide by the high ethical standards required of attorneys

3. The findings of fact ascribed to your Petitioner are not a crime, an act of moral turpitude, or a violation of either the Nevada Rules of Professional Conduct or the Rules of Professional Conduct in any bar of which your Petitioner is a member. Therefore, the findings of fact do not support the conclusion that your Petitioner failed to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

4. S.C.R. 51(4) is constitutionally defective in that it does not contain any instruction regarding the standard of proof required.

5. S.C.R. 70.5 establishing confidentiality of opinions on petitions under rule 57(1)(f) is a denial of due process to petitioner.

6. The Committee violated due process by addressing additional questions of fitness and character beyond those stated in its notice of hearing to your Petitioner.

III

THE SCOPE OF THE INVESTIGATION WENT BEYOND ASSURING THAT YOUR PETITIONER WILL NOT OBSTRUCT THE ADMINISTRATION OF JUSTICE OR OTHERWISE ACT UNSCRUPULOUSLY IN HIS CAPACITY AS AN OFFICER OF THE COURT

This Court established the Nevada procedure for determining the character and fitness of applicants in the case of In Re Bowen, (1968), 84 Nev. 681. On Page 684 of the opinion, the Court set forth the following procedure:

"The findings of the Board of Governors of the State Bar or a Committee such as

respondent, while given great weight, are not binding upon this Court.
(Citations Omitted)
The burden of showing that the findings are not supported by the evidence or that its decision or action is erroneous or unlawful is upon the Petitioner. (Citations omitted.)

There are some distinctions between admission proceedings and disciplinary proceedings, the essential one being that in the former the burden is on the applicant to show that he is morally fit, whereas in the later the burden is on the State Bar to prove that an attorney is morally unfit."

* * *

The purpose of an investigation by the Bar Association into an applicant's moral character should be limited to an assurance that, if admitted, he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court"

In Re Bowen, (1968), 84 Nev. 681

These purposes were reiterated in 1994 by the dissenting opinion in In Re Birmingham, (1994), 866 Pac. Rptr. 2d 1150, which involved the recent case of a major marijuana smuggler who was admitted to practice law by this Court after a finding of complete rehabilitation. The dissent noted, on page 1152 of the opinion, as follows:

"This court has previously recognized the two-fold purpose of lawyer discipline. In the case of In re Cochrane, 92 Nev. 253, 549 P. 2d 328 (1976), we stated that the fundamental "'objective of disciplinary action ... is not additional punishment of the attorney but rather to protect the public from persons unfit to serve as attorneys ...and to maintain public confidence in the bar as a whole.'"

(Citations omitted.) Although this is not a case involving the discipline of a licensed attorney, the twin objectives of lawyer discipline have equal significance in qualifying applications for admission to the bar. SCR 51, which addresses the qualifications of applications for examination, states at subsection (4) that an applicant must demonstrate good moral character and willingness and ability to abide by high ethical standards required of attorneys.

The Washington Supreme Court has recognized the "common purpose" underlying proceedings to reinstate suspended or disbarred attorneys and to initially screen persons who seek admission to the practice of law. In both cases, the fundamental concerns include protecting the public from unethical behavior, preserving public confidence in the judicial system and legal profession, and fairness to the applicant. (Citation omitted.)

IV

THE FINDINGS OF FACT DO NOT SUPPORT THE CONCLUSIONS OF THE COMMITTEE BECAUSE THIS COURT HAS PREVIOUSLY ADMITTED APPLICANTS WHO HAVE BEEN CONVICTED OF CRIMES AND OTHER ACTS OF MORAL TURPITUDE; WHO HAVE ENGAGED IN CONDUCT CONSTITUTING A VIOLATION OF THE NEVADA RULES OF PROFESSIONAL CONDUCT; AND WHO HAVE MADE MISSTATEMENTS ON THE NEVADA BAR APPLICATIONS. SINCE THE FINDINGS OF FACT ARE NEITHER A CRIME OR OTHER ACT OF MORAL TURPITUDE; A VIOLATION OF THE NEVADA RULES OF PROFESSIONAL CONDUCT; OR A MISSTATEMENT ON THE NEVADA BAR APPLICATION, THE FINDINGS OF FACT DO NOT SUPPORT THE CONCLUSION THAT YOUR PETITIONER FAILED TO DEMONSTRATE THAT HE IS OF GOOD MORAL CHARACTER AND WILLING TO ABIDE BY THE HIGH ETHICAL STANDARDS REQUIRED OF ATTORNEYS

In Re Waters, (1968), 84 Nev. 715 involved in part facts similar to your Petitioner herein.

The applicant had also been admitted to practice law in Texas, and had letterhead reading:

Kermit L. Waters
Attorney at Law
P. O. Box 502,
Childress, Texas 79201

The applicant then moved to Nevada, and crossed out the Texas address and typed in his Nevada address. The applicant then used the modified letterhead to write letters to two prisoners in California (where Petitioner was not admitted to practice) soliciting legal business.

Based upon these facts, the State Bar of Nevada found that the applicant had held himself out as an attorney licensed to practice law in Nevada and that he had practiced law in California without a license to do so and without associating California Counsel. This Court held, on page 715 of the opinion, that this finding was "without persuasion since they appear to rest upon suspicion rather than solid fact." The Court went on to observe, "The rules of professional conduct do not preclude a Texas attorney from corresponding with a California prisoner about his California case, nor do those rules suggest that letters from the Texas counsel are to be mailed from some point in Texas."

The conduct of the applicant in In Re Waters is more egregious than the conduct of your Petitioner. Your Petitioner placed the notation, "Admitted to practice in California and Texas" on the letterhead in an attempt to comply with the ABA Model Code and notify correspondents that he was not admitted to practice in Nevada, while Waters made no such statement on his letterhead. Likewise, Waters was soliciting prospective clients in a state in which he was not licensed to practice law (California), while your Petitioner made no solicitations and was corresponded only with existing clients or opposing attorneys in the

states where he was licensed to practice. Indeed, the State Bar of Nevada concedes "the ambiguity raised by it is **not** sufficient to conclude that he is participating in the unauthorized practice of law in the State of Nevada."

Ex Parte Kellar, (1965), 81 Nev. 240 involved a Black applicant who had been practicing law in the State of New York for 20 years but was denied admission by the State Bar of Nevada because he failed to disclose misdemeanor criminal proceedings in New York (his home state) on his application and because the applicant violated Nevada Canon 20 by granting an inflammatory media interview claiming he was the victim of discrimination.

The Court refused to follow this recommendation on pages 247-248 of the opinion for the following reasons:

> "* * * The esteem of some 30 years of seemly endeavor and achievement is now in jeopardy because of this rash appeal. We could readily understand and forgive his impatientence with our admission procedures but we have no patience with is percept of the sinister in the conduct and conclusions of the board and of the committee. Our concern here is with the impress the discipline of our profession has made upon him. Years of industry, achievement, good citizenship and honorable conduct are not compurgators; these years testify to his regard for the profession and his obligations as a professional person. We think it harsh then to deny the petitioner admission because of a single offense of this nature, here disciplined, according to the Cannon.
>
> We are less troubled by his candidness in reporting the charge against him in New York. He did not shirk his responsibility to the people of the State of New York. If he did this in concern with his

application in this state he did not as an opportunist, forthwith, report to this court. We, in decent respect to a man who meets his private obligations, write this down as a shrewd and in no manner dishonest appraisal of the complainant's demand. His policy in this action was not discreditable and he has not been disciplined by the bar of New York."

In Re Farris (1971), 87 Nev. 508, involved an applicant who lied about his Nevada residency and traffic offenses on his bar application. (This obviously preceded the U. S. Supreme Court decisions invalidating residency requirements for attorneys.) Although the applicant later confessed his wrongdoing, the State Bar of Nevada still recommended against his admission. This Court rejected this recommendation on page 511 of the opinion as follows:

"We cannot, of course, know conclusively that petitioner's ordeal of the last two years has been sufficient to stay him from like conduct in the future. We cannot know, nor can he prove, that he has matured as much as the record before us would make it appear. We do believe, however, the evidence more than preponderates in his favor, and that, in light of all material considerations, we should permit petitioner an opportunity to practice the profession for which he has prepared himself during the past six years."

As an additional note, this Court held in Farris that it applies the civil law standard of a "preponderance of the evidence" to Character and Fitness Cases on Admission to the Nevada Bar.

The case of Ex Parte Abbatangelo, (1964), 80 Nev. 584 involved an attorney admitted to practice in Nevada despite proven charges of forgery and failure to support the attorney's wife and minor children.

This attorney had forged his wife's name to

a bank note. This Court excused this transgression because it found that it had been the business practice of the attorney to forge his wife's name to banking documents, and that both the bank and the wife knew of this. Likewise, this Court disregarded the attorneys failure to pay spousal and child support, finding that the failure to pay was beyond the attorney's control because the attorney had no money. The Court went on, on page 587 of the opinion, to hold as follows:

> "The board in its report to this court stated that its adverse recommendation was in part due to the demeanor of petitioner during its interviews with him. We do not believe that the unfavorable impression he gave to the bard even considered in connection with the other unfavorable evidence should be a cause for denial of petitioner's application for admittance to practice law in Nevada. **Our reason for such conclusion stems from the fact that the record <u>is entirely bare of ANY professional misconduct while petitioner practiced law in Pennsylvania</u>** or of any unethical conduct in connection with his employment in Las Vegas. In fact, petitioner's good moral character is supported by communications from many Pennsylvania and Las Vegas attorneys."

<u>COMMENT:</u> The Committee on Character and Fitness, after an extensive investigation of your Petitioner, has found only one single action (your Petitioner's decision to pay a Los Angeles Property Tax lien through the enforcement process instead of voluntary payment) which the Committee contends demonstrates that your Petitioner is not of good moral character and not willing and able to abide by the high ethical standards required of attorneys. Your Petitioner asserts that this one single act is not a crime; not an act of moral turpitude; and not even a violation of the Professional Rules of Conduct for Attorneys in

Nevada or in any state where your Petitioner is admitted to practice. Accordingly, your Petitioner submits that his decision to pay the property tax liens through the enforcement process cannot constitute a factual basis to support the findings of the Committee.

The Committee seeks to enhance its findings with your Petitioner's use of letterhead and your Petitioner's action respecting obtaining a business license for his corporation. Your Petitioner asserts that these are nothing more than judgment decisions of your Petitioner, and do not demonstrate that your Petitioner is not of good moral character and not willing and able to abide by the high ethical standards required of attorneys.

In the case of the letterheads, your Petitioner believed that the letterheads complied with the ABA model code. Your Petitioner did not review the Nevada codes because your Petitioner was not engaged in the practice of law in Nevada. Your petitioner readily conceded that the word "ONLY" should have followed the statement, "Admitted to Practice in California and Texas". This incident certainly establishes that Petitioner should have been more careful in the formulation of the letterheads. However, this incident does not involve character issues because there is no evidence your Petitioner willfully, intentionally, or deliberately sought to engage in the unauthorized practice of law in Nevada or ever in fact mislead anyone to believe that he was authorized to practice law in Nevada. Certainly, the conduct of your Petitioner was far less objectional than the letterhead conduct of Attorney Waters, which this Court excused.

The failure of your Petitioner to cause his corporation to obtain a business license to have his computer receive 900 telephone calls at his home involves absolutely **NO** misconduct at all! The issue of what activity may be conducted from a residence without a business license is one of the big issues of today. Most business licensing

statutes were created before the electronic age, when a business could not be conducted in a residence without impacting traffic, parking, and basically changing the nature of the community from residential to business. Now, a computer can be hooked up to telephone lines, and there is virtually no distinction between activity conducted in the residence for business and activity conducted in the residence for pleasure or family purposes.

Your Petitioner did not ignore the business licensing requirements. Your Petitioner conducted what he believed to be a reasonable investigation to determine that there was no statute that specifically required your Petitioner to obtain
a business license for the particular business he was conducting.

The Committee wishes to substitute its judgment for that of Petitioner. The Committee objects to Petitioner's investigation procedure of making an anonymous call instead of submitting a formal application that would require the Clark County bureaucracy to make decisions based upon antiquated laws that were not clearly applicable to the Petitioner's fact situation. However, the fact that your Petitioner made an investigation demonstrates that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys because your Petitioner made a reasonable effort to confirm his opinion that no business license was required.

As an additional comment, your Petitioner believes an attorney in California would be liable for malpractice if he advised a client in this same situation to submit a formal application instead of waiting for the government to raise the issue.

The Committee seeks to use this one, isolated instance to suggest that the practice of your Petitioner is to be less than candid in communications. However, the matter in which the State Bar of California issued your Petitioner

an Admonition presents a much more complete and accurate picture of the honestly and candor of your petitioner.

Your Petitioner was retained by Paul Nation, a longtime friend and client, in connection with an attorney fee the client had been ordered to pay as part of an unsuccessful class action lawsuit. The award was due to malpractice by the clients former attorney. Your Petitioner successfully reduced the attorney fee award and assisted the client in obtaining contributions from the other class members to fund the settlement. Your Petitioner then agreed to represent the client in a malpractice action against his former attorneys.

Your Petitioner became involved in other matters out of state and committed malpractice by not timely bringing the case to trial. Your Petitioner then arranged for another attorney to substitute into the case to attempt to bring the case to trial. When the motion for a special setting was denied and the case dismissed for failure to bring it to trial within the statute of limitations, your Petitioner arranged for the new attorney to appeal the case. Your Petitioner acknowledged the malpractice to the client and instructed the new attorney to explain the clients malpractice claim to the client. Your client also executed declarations under penalty of perjury frankly and forthrightly admitting his error, and these declarations became the basis of the relief granted by the Appellate Court. The client refused to take any action against your Petitioner or to file a complaint with the California Bar. Indeed, the client only wished your Petitioner well and thanked your Petitioner for all the help previously provided and for arranging for his representation by new counsel. However, the appellate court brought the matter to the attention of the California Bar when it set aside the dismissal and ordered that the case proceed to trial. The candor and forthrightness of your Petitioner with the State Bar of California (along with the honest,

direct, forthright written confession of your Petitioner to the Court preventing the client from sustaining permanent damage) resulted in the issuance of an Admonition by the State Bar of California,an action that does not constitute discipline.

Your Petitioner is certainly ashamed of the mistake. Nevertheless, your Petitioner is proud that he had the honesty, integrity, and courage to voluntary come forward and admit the mistake and take action in the best interests of the client to minimize the harm, even though those actions created potential malpractice and disciplinary actions against your Petitioner and deprive your Petitioner of any substantial ability to defend an actions. Your Petitioner will always regret that he failed this particular client because the client died suddenly before relief was obtained from the appellate court, but your Petitioner is comforted by the knowledge that the client's widow and family were eventually able to benefit and obtain a recovery, a recovery made possible in part by you Petitioners "demonstration of good moral character and his willingness to abide by the high ethical standards required of attorneys" by an immediate, prompt, and complete confession of wrongdoing.

Your Petitioner submits that this incident is much more representative of his candor, honesty, character and fitness than any incident relied upon by the Committee. This incident "demonstrates that your Petitioner is of good moral character
and willing and able to abide by the high ethical standards required of attorneys".

A summary of this incident appeared in the discipline history provided to the Committee by the State Bar of California as Investigation Number 89-0-12466, yet the Committee failed to ask one single question about this incident. Certainly, an objective investigative body should have been more interested in the interaction between an attorney and a client

that resulted in an Admonition than the interaction between a corporation owned by the attorney and a local governmental business licensing board. The interaction between the attorney and the client bears directly on whether the attorney will obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the Court. The interaction between a corporation owned by the attorney and the local governmental licensing board has utterly no bearing on whether the attorney will obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the Court.

This Court has correctly and consistently held that the primary evidence of the character and fitness of a long time practicing attorney is the record in the attorney's home state (Ex Parte Abbatangelo, supra, Ex Parte Kellar, supra). This Court has correctly and consistently refused to jeopardize distinguished legal careers for isolated instances of questionable behavior (Ex Parte Abbatangelo, supra, Ex Parte Kellar, supra). This Court has correctly and consistently
refused to impose the penalty of exclusion from the legal profession when the evidence more than preponderates in favor of the applicant (In Re Farris, supra).

In addition to his distinguished legal career of 23 years without any discipline, your Petitioner has previously provided numerous declarations from associates, clients, attorneys, and law professors covering his entire legal career to the Committee on Functional Equivalence. Your Petitioner submitted over eight hours of oral testimony through himself and four different witnesses before the Committee on Functional Equivalence. Each of these witnesses, who knows Petitioner in different respects, has stated that your Petitioner is of good moral character and willing and able to abide by the high ethical

standards required of attorneys.

The preponderance of the evidence shows that your Petitioner has more than demonstrated that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

Under the previous decisions of this Court, the findings of the Committee do not support its conclusion that your Petitioner has failed to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

V

PETITIONER'S CONDUCT WOULD NOT CONSTITUTE A CRIME OR OTHER ACTS OF MORAL TURPITUDE AND DO NOT CONSTITUTE GROUNDS FOR DISCIPLINE UNDER THE NEVADA RULES OF PROFESSIONAL CONDUCT

Your Petitioner further asserts that the factual findings of the committee are not supported by the evidence before it because none of the actions forming the basis of the recommendation of the committee would constitute an act of moral turpitude or a basis for discipline either under the Nevada Rules of Professional Conduct or under the Rules of Professional Conduct of any state in which your Petitioner is admitted to practice. While the Nevada Rules of Professional Conduct do not yet apply to your Petitioner, it is an inherent violation of the Fifth Amendment rights of your Petitioner to procedural and substantive due process of law to exclude your Petitioner from admission to practice law in Nevada for acts that would not be prohibited to or constitute a basis for discipline of attorneys now admitted to practice in Nevada! While burden of proof and the standard of proof may be different for applicants than attorneys admitted to practice, the prohibited conduct is the basically the **same!** There is utterly no legal or factual basis for this Court to apply one standard to an attorney licensed to practice law in Nevada and a different standard for an applicant for admission.

In the case of In re Cochrane, (1976), 92 Nev. 253, (in which Justice Rose represented the petitioner) an attorney licensed in Nevada had been convicted in Federal Court of the crime of willful failure to file federal income tax returns. This Court found that the conviction was not an offense that involved moral turpitude, but was nevertheless a basis for minor discipline under S.C.R. 204, At the time, S.C.R. 204 read as follows:

> No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers lawyers are, or disrespect of the judicial office, which lawyers are bound to uphold, or corruption of any person or persons exercising a public office or private trust or deception or betrayal of the public. When rendering any such improper service or advice the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute has been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen."

S.C.R. 204 clearly provides that an

attorney must observe statutory law. However S.C.R. 204 was repealed by order of this Court on January 27, 1986, with the order of repeal becoming effective March 28, 1986. In its place, this Court adopted S.C.R. 203, which reads as follows:

> "It is professional misconduct for a lawyer to:
> 1. Violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
> 2. Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
> 3. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
> 4. Engage in conduct that is prejudicial to the administration of justice;
> 5. State or imply an ability to influence improperly a government agency or official; or
> 6. Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The revision deleted violation of statutory law from the definition of misconduct for Nevada attorneys.

Of course, criminal acts are still prohibited by S.C.R. 101, which reads as follows:

> "Conviction of a crime or acts or omissions by an attorney, including contempt of a hearing panel, individually or in concert with another person, which violate the rules of this court are misconduct and constitute grounds for discipline."

In the case of In re Stuhff, (1992), 108 Nev. 635, this Court analyzed S.C.R. 203(4), which prohibits an attorney from engaging in conduct that is prejudicial to the

administration of justice. This Court ruled, on pages 633-634 of the opinion, as follows:

> "SCR 203(4) is modeled on MRPC 8.4(d). Courts that have considered MRPC 8.4(d) have concluded that conduct that intentionally interferes with the criminal justice and civil litigation processes is general prejudicial to the administration of justice. (Citations omitted.) The Supreme Court of Oregon has interpreted the word "prejudice" in context of this rule to require either repeated conduct causing some harm to the administration of justice or a single act causing substantial harm to the administration of justice."

This Court went on to find that the attorney had violated S.C.R. 203(4) by serving a complaint that had been filed with the Nevada Commission on Judicial Discipline against a judge when service of the complaint was prohibited and resulted in the judge having to disqualify himself from sentencing the defendant.

It is clear that the conduct charged against your Petitioner is not prohibited by S.C.R. 101 or S.C.R. 203.

Your Petitioner is charged with failure to pay lien for local real estate property taxes. The failure to pay real estate property taxes is not a crime! Indeed, while it is a crime to fail to file a Federal Income Tax Return; it is not a crime to fail to pay Federal Income Taxes, let alone local property taxes. The **only** exception to this rule is taxes that were held in trust, such as withholding taxes. Since this Court has consistently held that the criminal act of failing to file Federal Income Tax returns is **not** a crime of moral turpitude, there is no basis to find that the failure to pay local property taxes, which is **NOT** a criminal act, is either an act of moral turpitude or prohibited by S.C.R. 101 or 203. Likewise, this Court has previously held that forgery of a wife's

signature on notes and failure to pay court ordered spousal and child support do not constitute acts of moral turpitude. Accordingly, there is no basis to find that the failure to pay local property taxes, which is **NOT** a criminal act, is either an act of moral turpitude or prohibited by S.C.R. 101 or S.C.R. 203.

Just because your Petitioner is an attorney does not deprive your petitioner of his other civil rights. Every citizen has the civil right to elect to either voluntarily pay a civil judgment or a tax lien or, in the alternative, elect to pay a civil judgment or tax lien through the lawful execution process. This decision to pay a tax lien through the execution process is a business decision and a lawful use of the Petitioner's civil rights; it is not an act of moral turpitude or does it establish that your Petitioner "failed to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys".

In the case of State Bar of Nevada vs. Claiborne, (1988), 104 Nev. 115, this Court considered discipline for former Federal District Court Judge Harry Eugene Claiborne, who was convicted of filing false federal tax returns. The Court held, on page 210 of the opinion, as follows:

> "...(1) the paramount objective of bar disciplinary proceedings is not additional punishment of the attorney, but rather to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar as a whole;
>
> * * *
>
> (3) this court must also consider the isolated nature of an attorney's conduct as well as his prior, exemplary professional standing...."

This Court has previously held that the

primary distinction between admission proceedings and disciplinary proceedings is which party bears the burden of proof. However, the overall purpose of each proceeding remains the same; to protect the public from persons unfit to serve as attorneys.

The Committee on Character and Fitness has failed to consider the isolated nature of their claimed misconduct as well as your petitioner's prior, exemplary professional standing. Certainly, the isolated act of your Petitioner in failing to pay a local property tax lien is certainly not as serious as Judge Claiborne's conviction of filing false federal income tax returns. Certainly, your petitioner's prior, exemplary professional standing of 23 years warrants the same consideration this Court afforded Judge Claiborne.

VI

S.C.R. 51(4) IS CONSTITUTIONALLY DEFECTIVE IN THAT IT DOES NOT CONTAIN ANY INSTRUCTION REGARDING THE STANDARD OF PROOF REQUIRED

S.C.R. 51(4) provides that an applicant shall "Demonstrate that the applicant is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law."

S.C.R. 51(4) gives no direction to the applicant or the State Bar of Nevada as to what his standard of proof is, although in the Farris case, supra, this Court adopted the civil preponderance of the evidence standard.

"The phrase "burden of proof," as used by the courts, is ambiguous; it is used indiscriminately as meaning either the necessity of establishing a fact or the necessity of making or meeting a prima facia showing.

The phrase "burden of proof as used by the courts, is one of double meaning, which circumstance has been the cause of confusion so great as to suggest the propriety of adopting a less objectionable term. The ambiguity lies in the indiscriminate use of the phrase "burden of proof," as meaning either the necessity of

establishing the existence of a certain fact or set of facts by evidence which preponderates to a legally required extent, or the necessity which rests on a party...."

31A, Corpus Juris Secundum 164-165, Evidence #103

"**Sufficient evidence** has been defined to be such evidence as in amount is adequate to justify the court or jury in adopting the conclusion in support of which it is adduced. Evidence is sufficient if it is such as to satisfy an unprejudiced mind."

32A, Corpus Juris Secundum 632, Evidence #1016

"**Preponderance of evidence.** the rule, stated infra #1019, that in civil cases an issue of fact cannot be regarded as proved unless the party having the burden of proof thereon produces a preponderance of evidence is sometimes embodied in statute, and a preponderance of evidence, or preponderant evidence, has been defined as that superior weight of evidence which, while not enough wholly to free the mind from a reasonable doubt, is sufficient to incline a reasonable and impartial mind to one side of the issue rather than to the other."

32A, Corpus Juris Secundum 632 - 633, Evidence #1017

COMMENT: The failure of S.C.R. 51(4) to establish the standard of proof required clearly operates as a substantive and procedural denial of due process to Petitioner because Petitioner is not advised what that burden of proof is. Is the burden of proof sufficient evidence? Is the burden of proof by preponderance of the evidence? Or is the burden of proof clear and convincing evidence or evidence beyond a reasonable doubt.

This practice constitutes a violation of substantive due process as well because it enables the committee and the Court to select the standard of evidence according to the result desired. Your Petitioner is not at this time accusing either the Committee or this Court of

actually employing different standards of evidence for different applicants, but your Petitioner does assert that the possibility for such irregularity subjects the rule and the procedure to constitutional challenge as a violation of due process. Finally, your petitioner asserts this Court should modify S.C.R. 51(4) to formally adopt preponderance of the evidence as the standard of evidence in accordance with the holding in Farris, supra.

VII

S.C.R. 70.5 ESTABLISHING CONFIDENTIALITY OF OPINIONS ON PETITIONS UNDER RULE 57(1)(f) IS A DENIAL OF DUE PROCESS TO PETITIONER

Procedural due process requires that the proceedings be fair. The hearing and appeal process violates your Petitioner's right to due process because Petitioner was not adequately notified of the nature and character of evidence that this Court has previously accepted under S.C.R. 64(2) to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

VIII

THE COMMITTEE VIOLATED DUE PROCESS BY ADDRESSING ADDITIONAL QUESTIONS OF FITNESS AND CHARACTER BEYOND THOSE STATED IN ITS NOTICE OF HEARING TO YOUR PETITIONER

The notice issued to Petitioner gives absolutely no notice that the Committee seeks to investigate anything other than the unauthorized practice of law and the relationship between your Petitioner and Jon P. Thornburgh, an attorney licensed in Nevada.

Pursuant to the notice, your Petitioner came to the hearing prepared to respond to the questions noticed by the Committee. The report of the Committee contains nothing about the relationship between your Petitioner and Jon P. Thornburgh, and cites no evidence that your Petitioner has engaged in the unauthorized practice of law in Nevada. This report is evidence of the thoroughness of preparation by

your Petitioner to provide a full, complete, candid, and thorough explanation of all matters under examination.

Your Petitioner was given no notification that the business license status of his corporation would be at issue, even through the business license issue was also raised during the hearing before the Committee on Functional Equivalency. Your Petitioner was also given no notice that the Los Angeles County Property Tax Lien would be at issue. Your Petitioner was given no opportunity to prepare any explanation or provide any documentation with respect to these issues.

Likewise, the Chairperson indicated that he was not willing for this hearing to take more than one or two hours. This statement and the notice lead your Petitioner to believe that the sole purpose of this hearing was to obtain clarification of the unauthorized practice of law issue. Therefore, your Petitioner did not seek to present additional testimony pertaining to character and fitness since he had already presented 8 hours of testimony and numerous documents and affidavits to the Committee on Functional Equivalency. Your Petitioner thought the only purpose of this hearing was to answer questions addressed him by the Committee on the issue of the unauthorized practice of law in Nevada by your Petitioner. At no time did the Chairperson advise Petitioner in advance of the hearing or as part of the initial inquiry that the business license status of Petitioner's corporation or the Los Angeles County Tax Liens would be the subject of inquiry.

The Committee's failure to give adequate notice of the other areas of inquiry deprives your Petitioner of procedural and substantive due process.

IX
CONCLUSION

In Re Schaengold, (1967), 83 Nev. 65

contains the following statement by this Court:

> "The practice of law is not a matter of the State's grace or favor. (Citations Omitted.) For those who possess the necessary qualifications it is a right. (Citations Omitted.) We hold the Board of Bar Examiners in high regard and appreciate its untiring service to this court and to the Bar of Nevada. The ultimate responsibility, however, rests with us. On the record before us, we conclude that Melvin Schaengold is entitled to practice law in Nevada."

Your Petitioner has been cleared on the issue of Character and Fitness by the State Bar of Washington and the National Conference of Bar Examiners. Your Petitioner has been practicing law for over 23 years, and your Petitioner has **never** been the subject of any discipline proceeding by any bar association. In addition, no client of your Petitioner has **ever** filed any complaint against your Petitioner with any bar association. Your Petitioner therefore had no reason to believe that the character and fitness phase of the examination would involve any new issues.

Your Petitioner believed, and still believes, that there was absolutely no factual basis for denying him admission to the State Bar of Nevada because of character and fitness. Your petitioner has been licensed as an attorney since January 5, 1972, and has **never** been the subject of any discipline by **any** bar of which he is a member. The purpose of the character and fitness rules is to protect members of the public, the bar, and the courts from dishonest attorneys, and evidence of the unblemished record of your Petitioner is certainly is sufficient under the Preponderance of the Evidence standard to overcome any questions raised by the Committee. Your Petitioner has 23 years of the practice of law that more than "demonstrate that he is of good moral character and is willing and able to abide by the high

ethical standards required of attorneys and counselors at law".

Your Petitioner offers herewith as new evidence three additional declarations which "demonstrate that he is of good moral character and is willing and able to abide by the high ethical standards required of attorneys and counselors at law". Should this Court desire additional, Petitioner can offer 25 to 50 additional like declarations from associates over the past 24 years. These declarations are not submitted herewith because 30 days is insufficient time to gather the additional declarations, and because additional declarations would only be cumulative. However, if this Court desires Petitioner to submit further evidence, your Petitioner is ready, willing, and able to do so.

Finally, S.C.R. 51(5) precludes admission of anyone who has been refused permission to practice law. This same provision has been adopted by most of the other states. Accordingly, the effect of denial of this Petition is that this Court will be effectively preventing your Petitioner from ever being admitted to practice in any other jurisdictions. Your Petitioner submits this constitutes an extremely harsh and totally inappropriate penalty for the charges against your Petitioner.

Your Petitioner is entitled to practice law in Nevada on the record now before this Court.

W H E R E F O R E, your Petitioner respectfully requests relief under S.C.R. 64(2) and that this Court direct your Petitioner be admitted to practice law in the State of Nevada.

Dated this 23rd day of January, 1995

/s/ CLARK GAREN

CLARK GAREN, PETITIONER,
APPEARING IN PRO PER,
P. O. BOX 6988,
STATELINE, NEVADA 89449-6988
(702) 435-7335

VERIFICATION BY PARTY

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

I am the Petitioner in the above-entitled action; I have read the foregoing Verified Petition under S.C.R. 64(2) and know the contents thereof; and I certify that the same is true of my own knowledge.

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER NAMED IN THE FOREGOING VERIFIED PETITION UNDER S.C.R. 64(2) AND KNOWS THE CONTENTS THEREOF; THAT THE PLEADING IS TRUE OF HIS OWN KNOWLEDGE, EXCEPT AS TO THOSE MATTERS STATED ON INFORMATION AND BELIEF, AND THAT AS TO SUCH MATTERS HE BELIEVES IT TO BE TRUE.

EXECUTED ON JANUARY 23, 1995 AT STATELINE, NEVADA

/s/ CLARK GAREN

CLARK GAREN, DECLARANT

PROOF OF SERVICE BY MAIL

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 1212 South Casino Center Blvd., Las Vegas, Nevada 89104

On January 23, 1995, I served the within VERIFIED PETITION UNDER S.C.R. 64(2) on the Admissions Director of the State Bar of Nevada and on the Chairman of the Board of Bar Examiners of the State Bar of Nevada by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Stateline, Nevada addressed as follows:

ADMISSIONS DIRECTOR,
STATE BAR OF NEVADA,
201 S. LAS VEGAS BLVD.,
SUITE 200,
LAS VEGAS, NEVADA 89101

CHAIRMAN,
BOARD OF BAR EXAMINERS,
STATE BAR OF NEVADA
201 S. LAS VEGAS BLVD.,
SUITE 200,
LAS VEGAS, NEVADA 89101

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON JANUARY 23, 1995 AT STATELINE, NEVADA

/s/ MARY McGEE

MARY MC GEE, DECLARANT

APPENDIX "J"

IN THE SUPREME COURT OF THE STATE OF NEVADA

in re the Application of No. 26595

CLARK GAREN,

Petitioner.
_____/

ANSWER OF THE BOARD OF BAR EXAMINERS
OF THE STATE BAR OF NEVADA
TO VERIFIED PETITION
PURSUANT TO S.C.R. 64

Keith L. Lee, Chairman
Committee on Moral
Character and Fitness of the
Board of Bar Examiners of
the State Bar of Nevada
Nevada Bar ID #00695
JEPPSON & LEE
100 West Liberty Street
Suite 990
Reno, Nevada 89501
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Submitted herewith, pursuant to S.C.R. 70, is the Board of Bar Examiners' (the "Board") Answer to Clark Garen's (the "Petitioner" Verified Petition for Review of Recommendation of the Board.

I.

FACTS

1. The Petitioner graduated from the University of West Los Angeles School of Law in Culver City, California, in 1971. The Petitioner obtained a master's degree in law and taxation from Golden Gate University in San Francisco, California, in 1993. The Petitioner was admitted to the California State Bar in 1972 and the Texas State Bar in 1985. He has practiced law in California for the past twenty-three (23) years.

2. Since his law school education was received from a non-accredited law school, Petitioner requested a waiver under S.C.R. 51 (3) so that he may sit for the Nevada Bar Exam. The waiver was granted and, Petitioner sat for and passed the 1994 Nevada Bar Examination.

3. Because of questions raised at the functional Equivalency hearing pursuant to S.C.R. 51 (3), the Petitioner's application for admission to the State Bar of Nevada was referred to the Character and Fitness Committee of the Board of Bar Examiners (the "Committee"). The Petitioner was Noticed for and appeared at a hearing before the Character and Fitness committee of the Board of Bar Examiners on August 19, 1994, in Las Vegas, Nevada. The Petioner testified under oath and presented other evidence in support of his application. Under the heading "Scope of Hearing" in the Notice of Hearing, which Petitioner acknowledged having received, is the following language. "including, but not limited to the unauthorized practice of law in the State of Nevada <u>and other such matters that may reflect on your character and fitness for practice of law.</u>" (Emphasis added.)

II.

THE AUGUST 19, 1994 COMMITTEE HEARING

A. FINDINGS OF FACT

From the evidence presented in Petitioner's application and at the hearing, the Committee found the following:

1. The Petitioner is a member of the State Bar of California and the State Bar of Texas.

2. The Petitioner claims a residency in Clark County, Nevada at 3467 La Paloma in Las Vegas.

3. The Petitioner operated a computerized 900 number commercial telephone business out of the house at 3467 La Paloma.

4. The Petitioner does not have, and did not apply for, a business licence with either the City of Las Vegas or Clark County, to conduct the 900 number commercial telephone business.

5. It was unclear from the evidence adduced at the hearing whether a business license was and is required to do the type of business that the Petitioner does from the 3467 La Paloma address.

6. The Petitioner did make an anonymous inquiry with the Clark County business license authority to determine whether, based upon the information the Petitioner gave Clark County, a county business license was required. After the anonymous inquiry, the Petitioner "got the idea that I didn't fit into any of the categories." Transcript of Hearing (" Tr.") p.13, 11. 10, 11. The Petitioner never did file an application with either the City of Las Vegas or the County of Clark business license divisions for a definitive determination of whether a business license was required. The Petitioner determined ". . . that what I was doing was not running a business within the ordinary term of the words of running a business . . . . " Tr., p. 15, 11. 7 - 9.

7. The Petitioner uses letterhead that has a Las Vegas address, Las Vegas phone number, and indicates that the Petitioner is an attorney at

law. On that letterhead, above the printing of his name is the following language: "Admitted to practice in California and Texas." There is no limiting language such as "Only Admitted" or "Not Admitted in Nevada" on the letterhead.

8. The Petitioner was unsure as to whom and when this letterhead was sent. It could have been sent "in connection with either my California or my Texas matters. It may have gone to my clients. It may have gone to counsel for opposing parties. It may have gone to courts." Tr., p. 28, 11. 17 - 20. The Petitioner doesn't remember sending it to anybody in the State of Nevada. Tr., p. 36, 11. 4, 5.

9. Seven complaints have been filed against the Petitioner with the State Bar of California. Three were filed in 1985, one in 1986, one in 1989, one in 1992, and one in 1993. The 1993 complaint was pending at the time of the hearing. Consequently, the State Bar of California was unable to issue a Certificate of Good Standing as required by S.C.R. 52 (1) (i) (2). The Petitioner's Certificate of Good Standing from the State of California was received by the State Bar of Nevada in early December and was dated November 3, 1994. One of the complaints resulted in an Admonition being issued by the State Bar of California and two, including the last matter concluded in late 1994, resulted in Warning Letters.

10. The Petitioner filed two bankruptcies in Texas (one chapter 7 and one chapter 11) because of the rapid decline in the real estate market in Houston, Texas, where he was an investor in an office building. The Petitioner was discharged pursuant to this bankruptcy filing.

11. A federal tax lien was filed against the Petitioner. The Petitioner testified that the federal tax lien has been satisfied.

12. A State of California tax lien was filed against the Petitioner. The Petitioner testified that the State tax lien has been

satisfied.

13. Two Los Angeles County tax liens are presently lodged against the Petitioner. The tax liens are a result of the Petitioner's sale of two parcels of real property in California in 1990. The Petitioner challenged both liens through an intermediate appeal process to the Assessment Appeal Board of the county of Los Angeles. One of the assessments was reduced from $276,000 to $232,100. The Petitioner did not seek judicial review of either final determinations of the Assessment Appeals Board of the County of Los Angeles. The Petitioner testified that he has no intention of discharging or challenging the validity of the liens. See, Tr., p. 55, 11. 20 - 24. He indicated that he was going to allow the liens to languish and that if he ever sold any other real property in California, he would pay the liens at that time. He does not presently own any assets in Los Angeles County but expects to acquire assets through an inheritance.

B. RECESS AND SUBSEQUENT INFORMATION FROM PETITIONER

At the conclusion of the hearing, the hearing was recessed to allow Petitioner to obtain the Certificate of Good Standing from the State of California and to provide additional information regarding the Los Angeles County tax liens and the assessment decisions related thereto. See, Tr., p. 67, 11. 4 - 7.

1. By letter dated August 24, 1994, received on August 29, 1994, by the State Bar of Nevada, Petitioner sent information regarding the Los Angeles County tax liens and action taken by the Assessment Appeals Board and additional information regarding the outstanding complaint against him in California.

C. CONCLUSIONS OF COMMITTEE

From the facts adduced at the hearing and subsequent information received, the Committee concluded the following:

1. The Petitioner was less than candid in dealing with the Clark County business licensing

division in that he made an anonymous inquiry rather than filing an application for a business license to conduct his 900 number commercial telephone business from the house on La Paloma.

2. While the letterhead does not make it clear that the Petitioner is not licensed in California, the ambiguity raised by it is not sufficient to conclude he is participating in the unauthorized practice of law in the State of Nevada.

3. The seven complaints filed before the State Bar of California have all been concluded without adverse action having been taken against the Petitioner other than, in one instance, the issuance of an Admonition, and in two others, Warning Letters.

4. The bankruptcies were within Petitioner's rights and he does not appear to have abused the bankruptcy process.

5. The federal and state tax liens, having been satisfied, are not sufficient to sustain an adverse recommendations.

6. The failure to satisfy the lawful tax liens in Los Angeles County and the Petitioner's cavalier attitute toward them establishes his utter disregard and disrespect for lawful process.

D. RECOMMENDATION OF COMMITTEE

1. Based on the foregoing, the Committee recommended Petitioner be denied admission to practice law in the State of Nevada in that he failed to demonstrate that he was of sufficient good moral character and was willing to abide by the high ethical standards required of attorneys and counselors of law in the State of Nevada as required by S.C.R. 51 (4).

2. The recommendation was based on Petitioner's failure to satisfy the Los Angeles County tax liens which, in itself, demonstrates that the Petitioner has failed to carry the burden of establishing his fitness to practice law in the State of Nevada. The cumulative affect of the Petitioner's lack of candor in dealing with the Clark County business license

division regarding his 900 number commercial telephone business and the use of his ambiguous letterhead further establish that the Petitioner has failed to carry the burden of proving he is of proper character and fitness to practice law in the State of Nevada.

III.

INTRODUCTION

At a time when the legal profession is held in such general disregard and disrespect, the judiciary and legal profession must bear the primary responsibility for reversing this trend. See, In re Birmingham, 110 Nev 70, 866 P.2d 1150 (1994), dissenting opinion. As the Court stated in Matter of Cochrane, 92 Nev. 253, 549 P.2d 328 (1976), one of the purposes of a lawyer discipline, which also applies to admission proceedings, is ". . . to maintain public confidence in the Bar as a whole." Id. at 255, 549 P. 2d at 329. Values that have been the pillars of the legal profession are now more honored in their breach than in their observance. Integrity, honesty, candor, civility and community commitment have given way to commercialism, expediency, half-truths, manipulation of the facts to obtain preconceived results - all for personal gain.

Indeed, there are no assurances of how an individual, once he is admitted to practice law in the State of Nevada, will conduct himself as a counsellor at law. Nor is there assurance of the quality of the legal advice that he will render or the manner in which he will deliver it, but, indeed, past behavior and conduct serves as a mirror, reflecting the manner in which that person will, if given the opportunity, conduct himself in the discharge of his professional responsibilities.

IV.

PETITIONER'S PAST CONDUCT

Petitioner overlooks that fact that from 1985 until closing of the last matter in November 1994, he had been the subject of seven complaints to the State Bar of California,

resulting in one Admonition and two Warnings. Petitioner apparently makes the distinction between a complaint filed by a client and one filed by a third party. This is a distinction without a difference. Certainly those three complaints resulting in action by the State Bar of California establish that Petitioners conduct was less than exemplary. What is even more telling than the number of complaints, is that the last one filed in 1993 and only resolved last year by issuance of a Warning.

The committee concluded that, standing alone, Petitioner's failure to state on his letterhead that he was admitted only in Texas and California and not admitted in Nevada, was insufficient basis to recommend denial.

The Committee also found that, standing alone, the less than candid and straightforward approach in determining whether a business license was required from either Clark County or the City of Las Vegas for his 900 number telephone business conducted out of his home, was not sufficient basis for its recommendaion.

The Committee did, however, find that Petitioner's blatant disregard for an orderly discharge of the Los Angeles county tax liens was sufficient, when added to the letterhead and business licensing issues, to sustain a recommendation that Petitioner be denied admission to the State Bar for his failure to demonstrate that he can abide by and be willing to conduct himself according to the high ethical standards required of those admitted to practice law in Nevada.

V.

ARGUMENT

This Court, in Petition of Bowen, 84 Nev. 681, 447 P.2d 658 (1969), recognized that the accumulation of various discrepancies or transgressions would sustain a finding that an applicant for admission had not demonstrated his good character and fitness to be a member of the State Bar of Nevada.

A. THE LETTERHEAD

With respect to the letterhead issue, Petitioner assets that his conduct was less egregious than that of Mr. Waters in In re Petition of Waters, 84 Nev. 715, 447 P.2d 661 (1968). In fact, Petitioner's conduct is essentially the same as Mr. Waters' conduct regarding their respective letterheads and their use of them. The Committee found that, standing alone, Petitioner's conduct, while less than desirable (in fact, Petitioner admits that he should have provided limiting language, Tr., p. 26, 11. 5 - 14), was not sufficient to sustain the Committee's recommendation. As in Waters, the Committee looked at other factors. The other factors in Waters was Mr. Waters' answer to a question on the Nevada Bar application inquiring whether he had ever been dismissed from any college, university or law school. Mr. Waters answered the question truthfully by saying "yes" and, in explanation, stated the date of his dismissal and that he was "now in good standing with the University of Texas." The court found that, he did in fact answer truthfully but failed to supply the details. Specifically, Mr. Waters had someone else take the Law School Aptitute Test to qualify for admission to the University of Texas, and when the University of Texas discovered this, it expelled Mr. Waters.

The Court ordered Mr. Waters admitted. It found that Mr. Waters was not guilty of a deliberate concealment of material information. Mr. Waters had supplied the Board of Bar Examiners transcripts of his college and law school records on which was reflected his dismissal from law school and the reasons therefor. The Secretary of the Board of Bar Examiners then requested a supplemental letter from Mr. Waters, explaining the circumstances of his dismissal from the University of Texas Law School. The local administrative committee was also advised of the circumstances and that committee reported favorably to the Board of Bar Examiners regarding Mr. Waters' admission.

Waters can be easily distinguished from the present situation. The Petitioner's conduct found reprehensible by the Committee in the instant case, did not occur ten (10) years ago, it occured in the last four (4) years. The letterhead incident occured in the last year; the business licensing situation occurred within the last four (4) years; and the failure to pay the tax lien is continuing to this day.

B. THE BUSINESS LICENSE

With respect to the business license issue, the Petitioner asserts that he conducted what "he believed to be a reasonable investigation to determine that there was no statue that specifically required Petitioner to obtain a business license for the particular business he was conducting." Tr., p. 13, 11. 16 - 20. The Petitioner then goes on to explain what he did, and his reasons for doing so. He then concludes that he made a "reasonable effort to confirm his opinion that no business license was required." Tr., p. 14, 11. 4 - 6.

Obviously, Petitioner had already arrived at an opinion that a business license was unnecessary. Then he determined how to make inquiry to obtain vague answers justifying his preconceived notion while remaining anonymous so as to avoid any detection or further investigation. This is exactly the type of conduct that has lowered our profession to the debts from which it is trying to escape. The appropriate and professional manner to determine whether he (the Petitioner) or any prospective client required a business license was to go to the appropriate licensing authority, lay out all of the facts, seek the licensing authority's opinion or recommendation, and then, if Petitioner disagreed with that recommendation, to pursue whatever legal remedy or remedies are available.

The fact that Petitioner had already reached an opinion before he made his inquiry, coupled with the fact that the inquiry was anonymous with only selected facts, clearly

demonstrates that he does not meet the high ethical standards required of a lawyer in the State of Nevada.

C. THE TAX LIENS

With respect to Petitioner's failure to discharge and satisfy the Los Angeles county tax liens, Petitioner argues that he is simply exercising his civil rights and sound business discretion in failing to pay a debt that is validly due and owing. Petitioner exercised his civil rights by prosecuting an appeal to the Assessment Board. In fact, he successfully used that process to have one of the assessments reduced. He took no further appeals but has allowed the debts to languish unpaid. Petitioner says that his failure to discharge these debts, until he decides to do so, is not indicative of lack of good moral character and does not render him unfit to practice law in Nevada. We must ask, in these times when lawyers are held in such disrepute: "Is this the example that we wish to hold out to the public that reflects the soul of the legal profession?" The answer is resounding "No!" Ignoring legal obligations, flaunting lawful process, using the system - not to assure justice is done but for personal objectives, are not the standards to which practicing attorneys should aspire.

D. PETITIONER'S CONDUCT COMPARED TO CITED CASES

Petitioner compares his conduct to the conduct of the petitioner in In re Kellar, 81 Nev. 240, 401, P.2d 616 (1965). Mr. Kellar has been a practicing attorney in the State of New York for some twenty (20) years before he moved to Las Vegas in 1960. While in New York, a misdemeanor charge had been brought against him, individually, and in his capacity as a majority shareholder in a corporation regarding improprieties with respect to the New York rent control law during the years 1959 and 1960. Through a series of negotiations, the corporation paid a fine and the charges were dismissed against Mr. Kellar. Apparently, Mr.

Kellar did not reveal the misdemeanor charges against him in New York on his Nevada Bar application. The Court, in finding that there was no good reason to deny Mr. Kellar's admission to the State Bar, held that, while he was not completely candid about the charges against him in New York, he had not shirked his responsibility to the people of New York in the way in which handled the resolution of those misdemeanor charges. The Court also found that Mr. Kellar had "years of industry, achievement, good citizenship and honorable conduct . . . ."

Unlike Mr. Kellar, Petitioner has had seven (7) complaints filed against him in the State of California since 1985, the latest one in 1993. He has received on Admonition and two Warnings. There is not a twenty (20) year record of industry, achievement, good citizenship and honorable conduct by the Petitioner herein.

The Petitioner also compares his conduct to that of Mr. Farris in Petition of Farris, 87 Nev. 508, 49 P.2d 1156 (1971). Mr. Farris, in his application to the State Bar, indicated he was a resident of the State of Nevada when, in fact, he was not. While the Court did not condone this misrepresentation, because of Mr. Farris' good conduct in clerking for two District Judges in the State of Nevada, both of whom gave him good recommendations, the court found that the indiscretion was attributable to Mr. Farris' immaturity. Certainly, the twenty-three (23) years that the Petitioner has practiced law in California do not support the excuse of "immaturity" to condone the Petitioner's inapproporiate conduct. The Court, in Farris, also determined that there had been a period of two years in which Mr. Farris had not committed any inappropriate behavior. Certainly, the Petitioner cannot say that for himself.

The Petitioner asserts that his conduct is less reprehensible than that of the petitioner in In re Abbatangelo's Petition, 80 Nev. 584, 397 P.2d 182 (1964). Mr. Abbatangelo had signed

his then wife's name to a bank loan application and promissory note in Pittsburgh, Pennsylvania. Shortly thereafter, Mr. Abbatangelo moved to Las Vegas to obtain a divorce. While in Las Vegas, and after obtaining his divorce, Mr. Abbatangelo did not pay for support of his children and spouse in Pennsylvania. The Court found that Mr. Abbatangelo had not forged his wife's name on the loan documents, but that his signing of his wife's name was not unusual and was done with her apparent, if not actual, consent. She had received benefits from the loan and there was no intent to defraud the bank. The Court further found that, because of Mr. Abbatangelo's financial condition, and the fact that once he was back on his feet financially, he began an orderly discharge of his spousal and child support payments, his failure to pay those payments when he first moved to Las Vegas was beyond his control.

The Petitioner mischaracterizes the situation in Abbatangelo when he states that there were "proven charges of forgery." In fact, the Court found that there was not a forgery. Unlike Mr. Abbatangelo who apparently had no financial means to discharge his legal obligation (child and spousal support) there is no such evidence that the Petitioner is unable to pay the Los Angeles County tax liens.

Petitioner cites Petition of Schaengold, 83 Nev. 65, 422 P.2d 686 (1967), in which he accurately concludes that the Supreme Court has the ultimate responsibility in determining whether an applicant for the State Bar has met the requirements to be admitted to practice law in Nevada. Any suggestion, however, that Petitioner's inapproporiate conduct and Mr. Schaengold's problems are similar is misplaced. The question in Schaengold was whether he suffered from any mental illness that would disqualify him from practicing law. The Court, upon review of the record, determined there was not sufficient medical evidence to establish that he ws mentally unfit to practice law.

E. RULES OF PROFESSIONAL CONDUCT AND SUPREME COURT RULES

Petitioner argues that his conduct does not constitute a crime or other acts of moral turpitude that would subject him to discipline under the Nevada rules of Professional Conduct. Therefore, he should be admitted to practice law in Nevada. Petitioner recited S.C.R. 204 which was repealed in 1986, S.C.R. 203 which became effective in March 1986 and S.C.R. 101. None of these rules were used as the basis for the Board's recommendation. His conduct was not evaluated according to their constraints. In fact, since Petitioner is not a member of the State Bar of Nevada, he is not subject to those Rules.

However, one would hope that his conduct as a practicing lawyer for the last twenty-three (23) years would lead one to reasonably believe he would honor those rules in his strict observance of them. There is, however, to the contrary, irrefutable evidence to suggest that he would not strictly comply with and honor our rules of Professional Conduct.

Petitioner suggests that his conduct is not contrary to S.C.R. 203 (4) in that he is not engaged in conduct prejudicial to the administration of justice. Petitioner cited In re Stuhff, 108 Nev. 635, 837 P.2d 853 (1992). This case is inapposite to the stitution herein. Mr. Stuhff filed a complaint against a district judge in Clark county regarding a criminal case over which that judge was presiding. Mr. Stuhff's actions resulted in the judge recusing himself delaying the sentencing of the defendant. The Court found that Mr. Stuhff had violated certain provisions of the Nevada code of Judicial Conduct when he served the judge personally with a copy of the complaint filed with the Nevada Commission on Judicial Discipline. The Court found that Mr. Stuhff had violated S.C.R. 203 (4) and the conduct which that particular subsection of that Rule proscribes.

Without citation to any legal authority, Petitioner asserts that S.C.R. 51 (4) is constitutionally defective because it does not state the burden of proof. S.C.R. 64 (2), effective December 11, 1991, clearly states that the burden of proof is on the applicant. The court in Farris implies that the standard of proof is preponderance of the evidence. At the Committee's hearing, after the chairman's opening remarks regarding the applicant's burden of going forward (See, Tr., p. 4, 11. 5 - 9), the Petitioner was asked if he had any questions to which he replied "No sir." Tr., p. 5, 1. 4. The Petitioner did not seem to be confused or to have any questions regarding who had the burden of going forward and what the standard of proof was at the hearing. The Petitioner does not show any prejudice and raises this issue for the first time in this Petition.

Petitioner next raises an issue under S.C.R. 70.5 in which he refers to "Rule 57 (1) (f)" alleging a denial of due process. In his argument, again, without citation, and without reference to rule 57 (1) (f) or S.C.R. 70.5, he refers to the nature and character of evidence that "this Court has previously accepted under S.C.R. 64(2)." The Board is unsure as to how to respond to this issue because there is no Rule 57 (1) (f). S.C.R. 70.5 establishes the rule of confidentiality which protects the Petitioner and which Petitioner may waive with respect to his Petition. If Petitioner is alleging that there was "secret evidence" lodged with the Court, that allegation is simply outrageous and erroneous. If Petitioner is alleging that he was unaware of the basis upon which the Board made its recommendation, that is equally erroneous. Petitioner received a copy of the Findings and Recommendation of the Board that was lodged with this Court.

F. THE NOTICE OF HEARING

Petitioner next alleges that his due process rights were violated because he was not given adequate notice that the Board would

inquire into matters other than those related to the "unauthorized practice of the law and his relationship between John P. Thornberg, an attorney licensed to practice law in Nevada and Petitioner." This allegation is without merit. The Notice of Hearing which Petitioner acknowledged at the hearing as having received and was there in response thereto (See, Tr., p. 3, 11. 10 - 15), clearly states that the Board "would inquire into such other matters as it deemed necessary in order to determine the qualifications of Petitioner to be a member of the State Bar of Nevada." Petitioner never once during the hearing requested additional time or complained of surprise or other prejudice because of the Board's inquiry into matters other than the alleged unauthorized practice of law. In fact, the Petitioner specifically stated, when asked by the chairman if he wished to give a closing statement: "No. I think that you've got all of the evidence of what transpired before you, and I'll make notes here that I am to give you tax assessments decisions and clear California." Tr., p. 66, 11. 17 - 21.

G. NEW EVIDENCE

Petitioner attaches affidavits to his Petition and submits a first set of suplemental evidence to the Court in support of his admission. Petitioner also discusses a matter in which he admits he committed malpractice. He argues that his ready admission of malpractice is another indication of his fitness to be a lawyer because he did not avoid his responsibility to his client. Since the affidavits attached to his Petition and the Supplement and his discussion of the malpractice action were not present at the hearing or during the period of time that the hearing was recessed for supplemental information, they should be stricken and not considered by the Court.

H. STATE OF WASHINGTON

Petitioner states that he has been cleared on character and fitness issues by the State Bar of Washington. Perhaps, that is a misstatement.

Petitioner's application does not indicate that he ever applied to nor was admitted to the State Bar of Washington. If, indeed, Petitioner has applied to the State Bar of Washingtn, then he has either misrepresented on his current application his status with respect to other admissions and/or applications or he has failed to keep the Board of Bar Examiners advised of any change of circumstances which he is required to do by the application.

IV.

CONCLUSION

Petitioner has pushed to the very edge of professional propriety the letterhead and the business license issues.

Petitioner has gone over the edge with respect to his refusal to pay a just debt to Los Angeles County.

This is not conduct that can be excused or condoned because he was immature or that he was financially unable to meet his financial obligations, these are acts that are done recently, after more than twenty (20) years as a practicing attorney, and without any evidence of financial inability to pay.

Petitioner simply substitutes his own opinion as to what he should and could do as opposed to doing that which is ethically and professionally appropriate.

He has not demonstrated that he is willing and able to abide by the high ethical standards of an attorney admitted to practice law in Nevada and should therefore be denied admission.

DATED this 5th day of April, 1995.

Respectfully submitted,
COMMITTEE ON MORAL
CHARACTER AND FITNESS
/s/ KEITH L. LEE
Keith L. Lee, Chair
Nevada Bar ID #00695
JEPPSON & LEE
100 W. LIberty St., Ste. 990
Reno, NV 89501
(702) 333-6800

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief coplies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28 (e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 5th day of April, 1995.

Keith L. Lee, Chair
Nevada Bar ID #00695
JEPPERSON & LEE
100 W. LIberty St., Ste. 990
Reno, NV 89501
(702) 333-6800

CERTIFICATE OF MAILING

I hereby certify that I am an employee of JEPPSON & LEE; that I caused a true and correct copy of the within and foregoing ANSWER OF THE BOARD OF BAR EXAMINERS OF THE STATE BAR OF NEVADA TO VERIFIED PETITION PURSUANT TO S.C.R. 64 to be mailed at Reno, Nevada, postage prepaid this 5th day of April, 1995, addressed to:

Clark Garen
P.O. Box 6988
Stateline, NV 89440-6988

APPENDIX "K"

IN THE SUPREME COURT OF THE STATE OF NEVADA

In re: Admission of: No. 26595

CLARK GAREN,

Petitioner.

_____/

REPLY TO ANSWER OF BOARD OF BAR EXAMINERS

CLARK GAREN
ATTORNEY AT LAW,
P. O. BOX 6988,
STATELINE, NEVADA 89449-6988
(702) 435-7335

PETITIONER APPEARING IN PRO PER

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ADDITIONAL EVIDENCE SUBMITTED AS EXHIBITS

EXHIBIT NUMBER:	DESCRIPTION OF EXHIBIT
1	Declaration of Frank Roesch

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I
INTRODUCTION

Your Petitioner files this Reply for the sole purpose of clarifying issues raised by the Answer of the Board of Bar Examiners that were not previously addressed by the Petition. The failure to address an issue raised in the Answer is not an concession but rather is an indication that the issue was adequately addressed in the original Petition.

II
THE WASHINGTON STATE BAR SITUATION

The Board of Bar Examiners claims your Petitioner "has either misrepresented on his current application his status with respect to other admissions and/or applications or he has failed to keep the Board of Bar Examiners advised of any change of circumstances which he is required to do by the application." (page 20, line 26 - page 21, line 4)

THIS IS NOT TRUE!

Your Petitioner filed his first and **only** formal application for admission to the State Bar of Nevada in early 1993. This application was rejected because your Petitioner did not graduate from an A.B.A. approved law school. Subsequent thereto, your Petitioner went through the functional equivalency process culminating with an Order from this Court granting a waiver of the A.B.A. requirement to your Petitioner. However, the only application **ever** filed by your Petitioner with the State Bar of Nevada was the Petition filed in early 1993. At the time of this Petition, your Petitioner had only applied to and only been admitted to two jurisdictions; California and Texas.

After Nevada rejected his application, your Petitioner applied for and was approved to take the Washington State Bar Examination in Winter, 1994. Your Petitioner notified the State Bar of Nevada of the Washington application during testimony before the Committee on Functional Equivalence of the State Bar of Nevada. Your Petitioner testified that he had just taken the

Washington State Bar Examination one or two weeks before the hearing. Testimony was also offered by your Petitioner about the unusual Washington exam procedure that limited answers to 1 1/2 pages of double space typewriting on a legal size page and gave no credit for factual analysis. Finally, your Petitioner offered testimony about how difficult it was to take a Bar Examination after 22 years in the practice of law. Later in the hearing, your Petitioner again testified about the Washington Admission procedure in response to questioning about the inability of your Petitioner to list every single litigation to which he had been a party on his application. Your Petitioner testified about a recent experience with the Attorney for the State Bar of Washington, who had reviewed your Petitioner's Bankruptcy Schedules and had a question about a lawsuit for Assault and Battery listed on the schedules. When reminded about the lawsuit, I explained it was based on vicarious liability of a property owner, which satisfied his inquiry. I used this example to explain my application answer to the Committee on Functional Equivalency. This was a complete disclosure of my Washington status where I had been approved to take the application and approved for admission subject to passing the bar examination. My Washington status has not changed since the hearing.

Had the Board of Bar Examiners studied the transcripts of my hearing before the Committee on Functional Equivalence, they would not have irresponsively and wrongfully accused me of misconduct and non-disclosure!

III

COMPARISON TO WATERS CASE

The Board of Bar Examiners asserts that "Petitioner's conduct is essentially the same as Mr. Waters' conduct regarding their respective letterheads and their use of them." (Answer, 10:12 - 10:14). However, Mr. Water's failed to make **any** attempt to communicate that he was not licensed to practice law in Nevada by listing

the jurisdictions in which he was in fact admitted. More importantly, Mr. Waters was writing to potential clients looking for business in states in which he, himself, was **not** admitted to practice. There is no evidence that your Petitioner **ever** wrote to prospective clients in a state in which he was not admitted to practice soliciting business.

The Board of Bar Examiners goes on to discuss the irregularities in Water's taking of the Law School Aptitude Test, and distinguishes that conduct from the conduct of your Petitioner because of the passage of time between wrongdoing and admission. The problem with this reasoning is that the act of Mr. Waters was an inherently dishonest, fraudulent act. "Mr. Waters had **someone else** take the Law School Aptitude Test to qualify for admission to the University of Texas" (Answer, 11:1 - 11:3). By any standards of evaluation, this was an inherently dishonest, fraudulent, immoral act on the part of Mr. Waters **showing moral turpitude**. The Answer of the Board of Bar Examiners diverts attention from the initial act of dishonesty to the way it was disclosed on the bar application. However, the primary issue is the act of wrongdoing **itself**, not the method in which it was disclosed. There is no comparison between Water's act of outright fraud and dishonesty and the failure of your Petitioner to pay a local property tax lien!

IV
CALIFORNIA BAR HISTORY

Previous admission decisions place great weight on whether the licensed attorney was subject to "discipline" in other jurisdictions of licensure. Your Petitioner, in 24 years of the practice of law, has never been subject to **any** "discipline" in any jurisdiction.

The Board of Bar Examiners argues that even though the seven complaints filed in California against your Petitioner were opposing parties and **never** resulted in **any discipline** being imposed, the complaints are conclusive evidence

that your Petitioner does not have "a twenty (20) year record of industry, achievement, good citizenship and honorable conduct by the Petitioner herein." (Answer, 14:19 - 14:21.) This argument is astonishing because, in the same document, the Board of Bar Examiners asks that a Declaration presenting contrary evidence in the form of expert testimony from the former Senior Trial Counsel of the State Bar of California be stricken. (Answer, 20:15 - 20:19).

The previous cases considered "discipline" in evaluating potential applicants; not notices of warning or the number of complaints where no wrongdoing was found. The finding by this Court in the Kellar case was that no **discipline** had been imposed. The opinion does not discuss whether any unfounded complaints had been filed against Mr. Kellar or whether any Notices of Warning were issued to Mr. Kellar.

The Board of Bar Examiners does not discuss the factual basis of any complaint; it merely parades 7 complaints over 24 years of practice as proof that your Petitioner is immoral. If there was any real wrongdoing or immoral conduct, it would have been discussed extensively in the answer.

As a final point, your Petitioner fails to see any difference between the mischaracterization of the impact of his California record by the Board of Bar Examiners coupled with its request to exclude expert testimony from a California discipline expert and the anonymous inquiry to the Clark County Business Licensing Division by your Petitioner.

V

MOTION TO STRIKE NEW EVIDENCE

The Board of Bar Examiners asks that all evidence introduced directly to this Court by your Petitioner be stricken and not considered. Not one single authority is cited to support this request.

While new evidence is ordinarily precluded in appellate proceedings; a proceeding under S.C.R. 64(2) is **not** an appellate proceeding. The

Board of Bar Examiners merely **recommends** action to this Court. This Court, in **all** cases, has "The ultimate responsibility for admission to the Bar of Nevada.[SCR 39, 76; Ex Parte Kellar, 79 Nev. 28, 31, 377 P. 2d 927 (1963)]" In Re Waters, (1968) 84 Nev. 712, 716.

> "The findings of the Board of Governors of the State Bar or of a committee such as respondent,while given great weight, are not binding upon this Court. (Citations omitted.) The burden of showing that the findings are not supported by the evidence or that its decision or action is erroneous or unlawful is on the petitioner. (Citations omitted)"
>
> In Re Bowen, (1969), 84 Nev. 681, 684

S.C.R. 64(2) does not address whether your Petitioner is permitted to introduce new evidence. However, this Court has previously permitted applicants to satisfy this burden by introducing new evidence before this Court.

In the Case of Ex Parte Kellar, (1965), 81 Nev. 240, 242, the following passage from the opinion clearly shows that this Court permitted the applicant to introduce new evidence:

> "The Board of Bar Examiners recommended that he not be admitted on the ground that he had failed to meet character standards. After reviewing the record supplied to us we would not have so recommended. **We acknowledge that we have the benefit of hindsight and a record supplemented since the time of the board's recommendation, and the supplementary information favors the petitioner."**

Finally, this Court made the following statement of Nevada public policy in Bennett vs. State Bar, (1987), 103 Nev. 519, 522 when it held as follows:

> ""On the other hand, we must ensure that applicants are treated fairly and that any qualification for admission to the bar

"must have a rational connection with the applicant's fitness or capacity to practice law. (Citations omitted). Accordingly, we have recognized exceptions and waived the application of SCR 51(3) "whenever it can be demonstrated that the rules operate in such a manner as to deny admission to a petitioner arbitrarily and for a reason unrelated to the essential purpose of the rule.""

Why does the State Bar of Nevada want to exclude the supplemental evidence? The Board of Bar Examiners does not challenge the accuracy, truthfulness, or genuineness of the evidence presented. The Board of Bar Examiners considers the evidence highly relevant and critical, or they would not have requested it be stricken. While the supplemental evidence casts doubt on the validity of the conclusions of the Board of Bar Examiners, they could have easily reconsidered their opinion in light of the new evidence submitted. In fact, isn't the Board of Bar Examiners charged with a continuing duty to make recommendations to this Court based on all evidence available at the time of any particular filing, including their Answer to the Petition herein?

It is clear that the Board of Bar Examiners just wants to deny admission to your Petitioner either because they don't like him; because they don't like his educational background; or both. This is demonstrated by the request that this Court disregard expert testimony from the former Senior Trial Counsel of the State Bar of California to permit the Board to mischaracterize the California record of your Petitioner.

The Board of Bar Examiners offers no legal authority for its request. The case law of this Court shows new evidence is routinely accepted by this Court in this type of proceeding. This Court should consider all evidence offered to it in reaching its final decision.

VI
STANDARD OF PROOF

Your Petitioner concedes that it is clear that your Petitioner has the burden of proof. The Board of Bar Examiners has apparently misinterpreted that the Petition challenges placing the burden of proof on Petitioner. Petitioner makes no challenge on the placement of the burden of proof.

The challenge is that the Supreme Court Rules do not specifically state what the **standard** of proof is, i.e. whether the burden of proof is on petitioner to establish his position by a preponderance of the evidence; to establish his position by clear and convincing evidence; or to establish his position beyond any reasonable doubt.

It is clear from the unsupplemented record that the preponderance of the evidence shows that your Petitioner has established that he is "of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court." Even the Board of Bar Examiners appears to concede that the supplemented record shows that, under any standard of evidence, your Petitioner has established that he is "of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court." The failure of the Board of Bar Examiners to address and analyze the standard of evidence in their answer coupled with the request to strike the supplemental evidence is an implied concession by the Board of Bar Examiners that your Petitioner has sustained his burden of proof.

VII
STANDARD OF THE PROFESSION

The patriotic words of the Board of Bar Examiners parallel the dissenting opinion in In Re Birmingham, (1994) 866 Pac. 2d 1150. In that opinion, Justice Rose and Steffen dissented to the admission of the applicant. However, it must be remembered that Justices Rose and Steffen applied that language to a person convicted of large scale smuggling of marijuana. Justice Steffen observed, on page 1163 of the Pacific Reporter opinion, as follows:

> "There is no way of telling how many lives, especially among our youth, were destroyed or devastated by the drugs flown into this country by our new admittee to the legal profession. The full extent and nature of the consequences resulting from the hundreds or thousands of pounds of marijuana smuggled here by Birmingham can never be measured. Moreover, we will never know the names or the number of victims, past and future, that have suffered and will suffer, at least in part, from Birmingham's crimes. Birmingham will now turn to the practice of law, but his victims will continue to mount in the years to come."

The conduct of Mr. Birmingham that inspired the language in the dissenting opinion has utterly no relation whatsoever to the failure to satisfy a local property tax lien.

Public service today is paralyzed by the search for any blemish, or bad publicity, on any applicant for public service. Many fine applicants for public service have been denied the opportunity to serve because a noisy opposition finds some obscure prior act that generates bad press. More fine applicants now refuse public service because they are unwilling to subject their lives to the microscope of the opposition. If any attorney regulatory body ever gains this extent of control over the ability to practice law, our entire legal system will cease

to function as an arena in which grievances may be settled because attorneys will no longer be free to zealously represent their clients.

The Board of Bar Examiners recommend denial of admission to your Petitioner either because they do not like him or because they do not like his educational background. The Board of Bar Examiners has gone through the life of your Petitioner with a fine tooth comb to find something, anything, to support their prior decision to recommend denial of admission to your Petitioner. Since there was nothing in the past of your Petitioner to justify a recommendation of denial, the Board of Bar Examiners writes the following passage to appeal to the emotions instead of the facts:

> "We must ask, in these times when lawyers are held in such disrepute: "Is this the example that we wish to hold out to the public that reflects the soul of the legal profession?" The answer is a resounding "No!"" Ignoring legal obligations, flaunting lawful process, using the system - not to assure justice is done but for personal objectives, are not the standards to which practicing attorneys should aspire."
>
> Answer, 13:13 - 13:20

Is admission to the State Bar of Nevada now going to become subject to the same battleground of personal views and vendettas that now haunts government service?

Nevada law limits the inquiry of the Board of Bar Examiners to determining whether your Petitioner was "of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court". Nevada law does not permit inquiry into every facet of the life of your Petitioner to determine if your Petitioner is "the example that we wish to hold out to the public that reflects the soul of the

legal profession?"

How does patently violating the standards by which the Board is charged with evaluating applications for admission to the State Bar of Nevada constitute "the example that we wish to hold out to the public that reflects the soul of the legal profession?"

VIII

MOTIVES OF THE BOARD OF BAR EXAMINERS

In 1988, your Petitioner contacted Bible, Hoy, Miller, Trachok & Wadhams, the attorneys who represented the Petitioners in Bennett vs. State Bar, (1987), 103 Nev. 520. Your Petitioner was directed to the attorney who actually handled the Bennett case, and your Petitioner sought to retain him to seek admission to practice in Nevada. Even though your Petitioner was ready, willing, and able to underwrite the cost of litigation at prevailing rates and accept the risk of failure, the Bible firm refused to even consider taking the case. The Bible firm advised your Petitioner that it would be politically undesirable for them to accept his case because representing graduates from California unaccredited law schools seeking admission to practice in Nevada would be so unpopular with the State Bar of Nevada leadership and the Court that taking my case would hurt both their practice and their ability to represent their other clients. They were kind enough to provide me with a copy of their brief.

Your Petitioner has now been through two hearings before the State Bar of Nevada. After more than 12 hours of testimony, the State Bar of Nevada has characterized your Petitioner as uneducated, incompetent, dishonest, and an embarrassment to the legal profession. In supporting these conclusions, the State Bar of Nevada has disregarded or mischaracterized the testimony presented by numerous witnesses, both attorney and non-attorney, who have each known your Petitioner for close to 20 years or more!

The tragedy is that it is clear that the State Bar of Nevada reached its conclusion

before the first word of testimony was presented. The State Bar of Nevada made its decision the moment it heard that your Petitioner was a graduate of a California unaccredited law school.

IX

WEIGHING OF THE EVIDENCE

Your Petitioner's sustaining his burden of proof is clearly illustrated by the following display of the evidence now before this Court:

EVIDENCE IN FAVOR OF PETITIONER	EVIDENCE AGAINST PETITIONER
1. 24 years of practice in California without discipline being imposed.	1. Failure to pay Los Angeles County Local Property Taxes.
2. 10 years of practice in Texas without discipline being imposed	2. Failure to clearly indicate on letterhead with Nevada address that Petitioner was not admitted to practice in Nevada
3. Testimony of James B. Fitzpatrick before Committee on Functional Equivalence about 20 year professional and personal relationship	3. Failure to make formal written application for local business license after inquiry supported conclusion no license was required

4. Testimony of Mary McGee before Committee on Functional Equivalence about 30 year personal and professional relationship

5. Testimony of Attorney Jon P. Thornburgh before Committee on Functional Equivalence about 20 year personal and professional relationship

6. Testimony of Gerald A. Smith before Committee on Functional Equivalence about 20 year personal and professional relationship

6. Declaration of Michael B. Farber, M.D., about a 45 year personal and business relationship submitted to Character and Fitness Committee

7. Declaration of Virginia D. Hunter, Ph.D., about a 23 year personal and business relationship submitted to Character and Fitness Committee

8. Declaration of Jerome Fishkin, Attorney at law, expert witness in California Attorney Discipline matters submitted with Petition

9. Declaration of Eric Dereng about activities of Petitioner detailing activities of Petitioner at his own expense to protect of the reputation of attorneys in the community as a whole submitted with Petition.

10. Declaration of Mary McGee about a 30 year personal and professional relationship submitted with Petition

11. Declaration of James B. Fitzpatrick about a 20 year personal and professional relationship submitted as First Set of Supplemental Evidence

12. Declaration of Kathy Hodgkin, Attorney at Law, who is a relatively new attorney employed by Petitioner in California describing her recent experience in the employ of your Petitioner submitted with the First Set of Supplemental Evidence

13. Declaration of Scott Middleton Hall, Attorney at Law, who is an attorney formerly employed by your Petitioner, describing his experience with Petitioner and stating that he still employs your Petitioner to represent him in difficult matters which is submitted with the First Set of Supplemental Evidence

14. Declaration of Gary K. Hahne, Attorney at Law, who is an attorney in Texas who describes his experience with your Petitioner on a case and thereafter retained your petitioner to represent him in some of his personal matters., which is submitted with the First Set of Supplemental Evidence

15. Declaration of Frank Roesch, Attorney at Law, who is an attorney who served with your Petitioner on the California Judicial Council Forms Committee, describing a 25 year relationship with your Petitioner, which is submitted as additional evidence

with this Reply to the Answer.

It is clear that **any** objective weighing of this evidence will result in a finding in favor of your Petitioner.

X
CONCLUSION

1. The acts forming the factual basis for the recommendation of The Board of Bar Examiners do not include any act of moral turpitude as defined by Nevada law;

2. Your Petitioner has sustained his burden of proof to show by a preponderance of the evidence that he is "of good moral character and willing to and in fact does abide by the high standards required of attorneys, and that he will not obstruct the administration of justice or otherwise act unscrupulously in his capacity as an officer of the court"

3. The report of the Board of Bar Examiners is a continuation of discrimination against your Petitioner because he graduated from a California unaccredited law school.

4. This Court should grant this matter expedited processing and order your Petitioner admitted to practice in Nevada.

Dated: April 25, 1995

/s/ CLARK GAREN

CLARK GAREN
PETITIONER IN PRO PER

VERIFICATION BY PARTY

STATE OF NEVADA)
) S.S.
COUNTY OF CLARK)

I am the Petitioner in the above-entitled action; I have read the foregoing REPLY TO ANSWER OF BOARD OF BAR EXAMINERS and know the contents thereof; and I certify that the same is true of my own knowledge.

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT HE IS THE PETITIONER NAMED IN THE FOREGOING REPLY TO ANSWER OF BOARD OF BAR EXAMINERS AND KNOWS THE CONTENTS THEREOF; THAT THE PLEADING IS TRUE OF HIS OWN KNOWLEDGE, EXCEPT AS TO THOSE MATTERS STATED ON INFORMATION AND BELIEF, AS THAT AS TO SUCH MATTERS HE BELIEVES IT TO BE TRUE.

EXECUTED ON APRIL 25, 1995 AT RIVERSIDE, CALIFORNIA

/s/ CLARK GAREN

CLARK GAREN, DECLARANT

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) S.S.
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 5700 ARLINGTON AVENUE, RIVERSIDE, CALIFORNIA 92504

On April 25, 1995, I served the within REPLY TO ANSWER OF BOARD OF BAR EXAMINERS on the Admissions Director of the State Bar of Nevada and on the Chairman of the Board of Bar Examiners of the State Bar of Nevada by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Riverside, California addressed as follows:

ADMISSIONS DIRECTOR,
STATE BAR OF NEVADA,
201 S. LAS VEGAS BLVD.,
SUITE 200,
LAS VEGAS, NEVADA 89101

CHAIRMAN OF THE
BOARD OF BAR EXAMINERS,
STATE BAR OF NEVADA
201 S. LAS VEGAS BLVD.,
SUITE 200,
LAS VEGAS, NEVADA 89101

UNDER PENALTIES OF PERJURY, THE UNDERSIGNED DECLARES THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON APRIL 25, 1995 AT RIVERSIDE, CALIFORNIA

/s/ JULIE HLEBOWSKI

JULIE HLEBOWSKI, DECLARANT

APPENDIX "L"

THE STATE BAR OF CALIFORNIA

OFFICE OF INTAKE/LEGAL ADVICE

1149 South Hill Street,
Los Angeles, California 90015-2299
(213) 765-1000 Fax (213) 765-1168
TDD # (213) 765-1566

November 3, 1994

State Bar of Nevada
201 S. Las Vegas Blvd., Suite 200
Las Vegas, NV 89101

In Re: Clark Garen, Membership No. 50564
Application For Admission

To Whom It May Concern:

Pursuant to a request, the State Bar hereby provides you with information bearing on the fitness of Clark Garen to practice law and supplemental to information provided by our Membership Records Department, attached hereto. The following seven (7) complaints were filed against Mr. Garen.

NO OPEN COMPLAINTS

CLOSED COMPLAINTS

The Luporini Complaint
90-0-10889
Complainant:
John Luporini

On January 11, 1993, John Luporini complained to the State Bar that Mr. Garen communicated with him knowing that he was represented by counsel. The State Bar's investigation revealed that Mr. Garen was representing a creditor in a debt

collection matter wherein he knew the debtor to be represented by counsel, and sent directly to the debtor a "Notice of Intention to File Suit in Municipal Court and of Increased Court Costs and Attorney Fees in Accordance with C.C.P. Section 1033(b)." Mr. Garen was contacted in this matter and he alleged that as specified in California Code of Civil Procedure Section 1033, subparagraph (b) (2), he is "required" to issue the above discussed "notice" directly to the defendant." The State Bar closed this matter on October 13, 1994, by issuing Mr. Garen a "Warning Letter".

The Frasso Complaint
85-0-11683
Complainant:
James Frasso

On March 21, 1985, James Frasso complained to the State Bar that Mr. Garen was indiscriminately harassing people who live within a 5 mile radius of the Torrance Airport by filing a John Doe Civil
Suit against 20,000 residence in the 5 mile radius. The State Bar closed this matter on April 27, 1987, due to Mr. Frasso's failure to cooperate in the State Bar's investigation. Mr. Garen was not
contacted.

The Blum and Williams Complaint
85-0-13379
Complainants:
Fred M. Blum

Gary Williams

On August 2, 1985, Fred Blum and Gary Williams complained to the State Bar that Mr. Garen served a complaint along with a threatening letter to various individuals living within a 5 mile radius of the Torrance Airport. During the State Bar's investigation Mr. Garen was

contacted and provided various court documents which showed that there was a basis for the lawsuit he filed. Therefore, the State Bar closed this matter on December 5, 1988, as there was insufficient evidence on which to base disciplinary action.

The State Bar Investigation
85-0-14232

On October 23, 1985, the State Bar opened an investigation against Mr. Garen. The complaint was forwarded to the State Bar from the Torrance Superior Court. It appeared from the complaint that Mr. Garen was being sued by his father, who is also an attorney, for $217,000.00. There was no alleged misconduct contained in the complaint which was filed with the Torrance Superior Court, The State Bar closed this matter on March 4, 1987, as there was insufficient evidence on which to base disciplinary action.

The Burkhart Complaint
86-0-12413
Complainant:
L.E. Burkhart

On May 1, 1986, L.E. Burkhart complained to the State Bar that Mr. Garen communicated with Mr. Burkhart knowing he was represented by counsel. The State Bar's investigation revealed that Mr. Garen wrote to Mr. Burkhart with a letter that was offensive. The State Bar closed this matter on July 16, 1986, as there was insufficient evidence on which to base disciplinary action.

The State Bar Investigation
89-0-12466

On May 33, 1989, the State Bar opened an investigation against Mr. Garen. The State Bar's investigation revealed that Mr. Garen represented a client in a malpractice matter. Apparently, Mr. Garen failed to communicate with

his client, and failed to perform the services for which he was employed resulting in the dismissal of the complaint. However, the dismissal was later reversed and the matter was remanded for trial setting. This matter was closed on May 18, 1990, with the issuance of an Admonition. The imposition of an Admonition is a closure of a matter; it is confidential, and it does not constitute discipline.

The Pierce Complaint
92-0-12499
Complainant:
Michael Pierce

On April 6, 1992, Michael Pierce complained to the State Bar that an associate who was under the supervision of Mr. Garen wrote several letters to his client in an attempt to settle an alleged debt owed to Citibank Visa. The State Bar's investigation revealed at the time of these letters, Mr Garen's office had knowledge that Mr. Pierce was attorney of record. Mr. Garen was contacted and stated that the alleged conduct occurred because his associate was not aware that Mr. Pierce was attorney of record. The State Bar issued a Warning Letter to Mr. Garen, cautioning him to avoid such conduct in the future. The file was closed on November 3, 1992.

/s/ WILLIAM W. DAVIS

William W. Davis
Assistant Chief Trial Counsel

WD/lw

Supreme Court, U.S.
FILED
JAN 22 1996
CLERK

No. 95-987

In the

Supreme Court of the United States

October Term, 1995

Clark Garen,

Petitioner,

vs.

Supreme Court of Nevada; Board of Bar Examiners of the State Bar of Nevada,

Respondent.

On Petition for Writ of Certiorari
To the Nevada Supreme Court

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

C.A. Olendorff, Esq.
Counsel of Record
Michael J. Warhola, Esq.
State Bar of Nevada
201 Las Vegas Blvd., #200
Las Vegas, NV 89101
(702)382-2200

Attorneys for Respondent, Board of Bar Examiners

QUESTIONS PRESENTED

1. Whether denying an applicant for admission to practice law in a state for failure to discharge a legally valid financial obligation imposed after notice and hearing, for using letterhead listing the applicant as "attorney at law" with a Nevada address with no limiting language describing that the applicant is **not** licensed in the state of Nevada, and for failing to adequately investigate the requirements and licenses necessary to operate a "900" tarot card telephone service raises a substantial question regarding the applicant's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution?

2. Whether the bare allegation, without factual or legal support, that Nevada utilizes a different standard to evaluate the moral character and fitness of non-A.B.A. law school graduates than that which is utilized for A.B.A. law school graduates is sufficient to allege a violation of an unstated U.S. Constitutional provision?

3. Whether the State has a legitimate interest in protecting, by statute, the confidentiality of information concerning persons who apply to practice law in the state of Nevada by keeping information regarding moral character and fitness investigations and hearings of applicants to that state's bar confidential unless the person applying for admission waives this confidentiality?

4. Does a state statute providing for appeal to the state supreme court of adverse recommendations affecting applicants for admission to the practice of law violate the Due Process or Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it does not provide for a "preliminary decision" prior to entry of formal Findings of Fact, Conclusions of Law and Recommendations by a hearing panel recommending denial of admission from which the appeal must be taken?

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No. 95-987

In the

Supreme Court of the United States

October Term, 1995

Clark Garen,

Petitioner,

vs.

Supreme Court of Nevada; Board of Bar Examiners of the State Bar of Nevada,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, respectfully submits this brief in opposition to the petition for writ of certiorari to the Supreme Court of the Unites States that was filed on December 21, 1995, by Clark Garen, the Petitioner.

I. JURISDICTION OF THIS COURT

This Court does not have jurisdiction over this matter to issue the Writ of Certiorari pursuant to 28 U.S.C. 1254(1) (1988) because this case is not a case stemming from a final judgment or decree rendered in the Courts of Appeals as required by that section.

II. STATEMENT OF THE CASE

A. Procedural History

Petitioner received a juris doctor degree from the University of West Los Angeles School of Law, Culver City, California, in 1971. The University of West Los Angeles is a law school that is not accredited by the American Bar Association ("ABA"). Petitioner was admitted to the California State Bar in 1972 and to the State Bar of Texas in 1985. In 1993, Petitioner earned an LL.M in Taxation from Golden Gate University which is accredited by the ABA.

In 1993, Petitioner applied for a waiver of Nevada Supreme Court Rule ("NSCR") 51(3) which requires that all applicants for admission to practice law in the state of Nevada must have received a bachelor of laws or equivalent degree from a law school approved by the ABA. Petitioner's Request for Waiver was deemed untimely for the 1993 bar examination and was denied by the Supreme Court of Nevada on May 28, 1993. The Court referred the Petition to the Committee on Functional Equivalency, a sub-committee of the Nevada Board of Bar Examiners, for an appropriate

investigation and report regarding Petitioner's arguments respecting the 1994 Nevada Bar Examination.

On March 9, 1994, a hearing was held before the Committee on Functional Equivalency of the State Bar of Nevada. The Committee filed its report recommending denial of the waiver with the Supreme Court of Nevada on April 5, 1994. See Petitioner's Appendix D. Based upon testimony and evidence adduced at the hearing, the Committee found that Petitioner's legal education he received from the University of West Los Angeles School of Law was not the functional equivalent of a legal education received at an ABA-accredited law school as required by NSCR 51(7). The Committee also found that Petitioner's LL.M degree in taxation was not functionally equivalent as required by NSCR 51(7). The Committee further found that Petitioner's education, training, experience and prior practice was not sufficient to justify a waiver of NSCR 51(3). Finally, the Committee concluded that, based upon the limited evidence provided in the hearing, Petitioner was not in compliance with NSCR 51(4) regarding the moral character and fitness requirements of NSCR 51(7)(c)(1), and that a full hearing regarding applicant's moral character and fitness would be required. Petitioner appealed this recommendation to the Supreme Court of Nevada. On June 17, 1994, the Supreme Court of Nevada granted Petitioner's request for waiver of NSCR 51(3) (Petitioner's Appendix F) stating that Petitioner's legal education, while not functionally equivalent to that of an ABA-accredited institution, had been sufficiently augmented by Petitioner's additional education and experience to uphold a waiver of NSCR 51(3). The Supreme Court of Nevada then referred Petitioner to the Committee on

Moral Character and Fitness for review pursuant to the Committee on Functional Equivalency's recommendation.

On August 19, 1994, the Committee on Moral Character and Fitness (hereinafter "C & F Committee") convened a hearing to determine if Petitioner was morally fit to practice law in Nevada in accordance with NSCR 51(4). The hearing was recessed and the record was kept open to allow Petitioner to submit additional evidence regarding two outstanding liens on property he sold in California and also for receipt of a Certificate of Good Standing from the state of California upon resolution of a disciplinary complaint that was then pending in California. The request for supplemental information was fully complied with on or before early December, 1994. On or about December 20, 1994, the Committee recommended that Petitioner be denied admission to the State Bar of Nevada for failure to demonstrate his good moral character and fitness pursuant to NSCR 51(4).

On January 24, 1995, Petitioner filed a Verified Petition under NSCR 64(21) (sic) appealing the finding by the Committee that Petitioner did not meet the requirements of NSCR 51(4). This matter was fully briefed by the parties and, on October 5, 1995, the Supreme Court of Nevada issued an Order Denying Petition and adopted the recommendation of the Committee on Moral Character and Fitness denying Petitioner's application for admission to practice law in the state of Nevada.

B. Petitioner Failed to Raise Federal Questions Before the Supreme Court of Nevada

Petitioner's appeal to the Supreme Court of Nevada regarding his denial upon moral character and fitness grounds (Petitioner's Appendix I) failed to raise, in its entirety, any federal questions or U.S. Constitutional issues or arguments relating to Respondent's Questions Presented Numbers 1, 2 and 4 (Petitioner's Questions Presented Numbers 1,2,3 and 5). Regarding Respondent's Question Presented Number 3 (Petitioner's Number 4), Petitioner alleged in his brief to the Nevada Supreme Court the issue of "SCR 70.5 Establishing Confidentiality of Opinions on Petitions Under Rules 57(1)(f) is a Denial of Due Process to Petitioner." Petitioner's total argument as contained within this section is as follows:

> Procedural due process requires that the process be fair. The hearing and appeal process violates your Petitioner's right to due process because Petitioner was not adequately notified of the nature and character of evidence that this Court has previously accepted under S.C.R. 64(2) to demonstrate that he is of good moral character and willing and able to abide by the high ethical standards required of attorneys.

Respondent's Appendix I, pg. 23.

No additional facts, citations to the record, case law, statute or constitutional provisions are alleged or provided. The Supreme Court of Nevada, in its Order Denying Petition, points to the total failure to allege facts or law regarding this issue and rules that "(G)aren cites no support for this contention. This court therefore does not have to address the contention." Respondent's Appendix A, pg. 2.

III. STATEMENT OF RELEVANT FACTS

A. Committee on Functional Equivalency Hearing

[All references in this section are to the Record on Appeal filed with the Supreme Court of Nevada regarding Petitioner's Application for waiver of NSCR 51(3)]

By order of the Supreme Court of Nevada, the Committee on Functional Equivalency is charged with the responsibility to determine whether the legal education received at a non-ABA accredited law school is the functional equivalent to that of an ABA-accredited law school, and, whether an applicant otherwise complies with all requirements for admission to practice law in the state of Nevada. NSCR 51(7)(c). Petitioner appeared before the Committee on Functional Equivalency on March 4, 1994. At the hearing, Petitioner testified and also presented four witnesses.

The Committee questioned Petitioner regarding letterhead he was utilizing which is reproduced and attached herein as Respondent's Appendix 1. The letterhead, on the top left-hand side, lists Petitioner as "attorney at law" with "advertising agency" printed on the next line, and next lists a Las Vegas, Nevada address. Also at the top of the letterhead in smaller letters is the language "admitted to

practice in California and Texas." The letterhead does not designate that Petitioner is not licensed to practice law in Nevada. On the top right-hand side of the letterhead, there is a drawing of a slot machine with Petitioner's 1-900 number and additional information contained on the front of the slot machine. Finally, below the slot machine, in much smaller letters, is "Clark Garen, Attorney at Law, Las Vegas, Nevada."

Petitioner testified that the purpose for the letterhead was to secure advertising for his 900-numbers. He testified that, as an advertising agency, he could secure a reduction in the price of the advertising. However, Petitioner also stated that he really does not have an advertising agency per se, except to secure advertising for his own 900-numbers. III ROA 43:2-10, and 103:20-24. Petitioner's 900-numbers include a Las Vegas tourist information line, a line that provides the time, a line that performs computerized tarot card readings, a line that provides live tarot card readings, a live conversation line where the callers may speak with females and, in California, a polling line on drug legalization. III ROA pgs. 54, 57, 105, and 112. Finally, Petitioner testified that none of the 900-numbers have a business license. III ROA 114:14-19.

Petitioner testified that he is not required by the Federal Trade Commission rules, when advertising his 900-number, to list that he is an attorney at law. III ROA 44:17-19. Petitioner testified that he may have used the letterhead in legal matters and also that "I don't know what matters I've used it on." III ROA 46:11-17. Petitioner's general testimony was that, although he did not know when this letterhead might have been used, it was not used for the

practice of law in the state of Nevada for cases that would require a Nevada license.

Petitioner admitted using the letterhead in a letter sent to an attorney in Texas that did not relate to his 900-number business but was in fact on behalf of a client. Petitioner stated that the recipient of the letter was not misled as to whether Petitioner was licensed in Nevada and that the recipient, a trustee in a bankruptcy action for one of Petitioner's clients, would not care. III ROA 45-46:18-6.

Petitioner testified that he employs Jon P. Thornburgh as a part-time lawyer in both California and Nevada. III ROA 39:1-16, 52:10-21. Petitioner stated that he essentially only has one client in California, J.J. MacIntyre Company, which is a collection agency owned by his client, James B. Fitzpatrick, and that Petitioner's law practice is a collection-type firm. III ROA 41:6-15. Petitioner also testified that the Las Vegas office is shared with Mr. Fitzpatrick who actually lives in Nevada, III ROA 47:17-18, that Petitioner sits on the Board of Directors of the J.J. MacIntyre Company and may also be an officer of the corporation, but that he does not give the board legal advice regarding matters in the state of Nevada, III ROA 49:16-25.

Gerald Smith testified on behalf of Petitioner as a satisfied client, as did Mary McGee and James B. Fitzpatrick. Ms. McGee also testified that she met Petitioner in college and that, when she lives in Las Vegas, which is fifty percent of the time, she lives at Petitioner's Las Vegas home. III ROA 173:21-24 and 176:1-20

Jon Thornburgh testified that he was an attorney licensed in Arizona, Nevada and California, III ROA 180:10-

13, and that he has been employed as an airline pilot since 1976. III ROA 186:9. Mr. Thornburgh did not take a bar examination until 1984 after his law school graduation in 1978 because of his airline job. III ROA 187:1-5. Thornburgh testified that he has not practiced law except for one year from 1984 to 1985. During that time, although still employed for an airline, he had an office with Petitioner from which he worked part-time for no salary in exchange for Petitioner's assistance with Thornburgh's divorce. III ROA 189-190. Thornburgh testified that he has never practiced law in Nevada, III ROA 193:12-14, and never had a case in Nevada or given advice to a Nevada client, although Petitioner has always offered him the use of his office, III ROA 194:6-20.

Apparently realizing the conflicts between Petitioner's and Mr. Thornburgh's prior testimony regarding Petitioner's association with Mr. Thornburgh in the practice of law in Nevada, Petitioner and Mr. Thornburgh filed supplemental Declarations with the C & F Committee on August 19, 1994, the day of the C & F Hearing. Petitioner and Mr. Thornburgh attempted to address the above-recited conflicting testimony. In Petitioner's Appendix B, pp. 37-31, Mr. Thornburgh states that Petitioner has always made space available for him on an as-needed basis and that whenever Thornburgh would make a Nevada court appearance, he would designate Petitioner's Nevada office as his address of record. Mr. Thornburgh further declares that Petitioner did refer some Nevada residents to him for legal representation but that he declined to accept those matters on behalf of the firm due to scheduling problems.

Petitioner's supplemental declaration is also filed on August 19, 1994 and is in Petitioner's Appendix B, pp. 41-

49. In the Declaration, Petitioner states that he retired from the practice of law after his first California based 900-number was launched and it generated a net income of $38,000 in the first ten days. He then retired to Nevada due to the fact that California has a state income tax and Nevada does not. He states that he testified before the Functional Equivalency Committee that any law practiced by the firm in Nevada was performed by Mr. Thornburgh and that Mr. Thornburgh's testimony that he had never practiced law in Nevada was not contradictory to Petitioner's testimony. Rather, he asserts that he intended to indicate that if any legal work had been performed in Nevada, it would have been done by Mr. Thornburgh and that Petitioner, at the time, had no actual knowledge of whether Mr. Thornburgh had ever practiced law in Nevada.

B. Committee on Moral Character and Fitness Hearing

[All references herein are to the Record on Appeal filed with the Supreme Court of Nevada regarding Petitioner's Moral Character and Fitness Hearing]

Petitioner's hearing before the C & F Committee was duly noticed and held August 19, 1994. Petitioner called no witnesses. Much of Petitioner's testimony was in further explanation of the testimony taken before the Functional Equivalency Committee; of which the C & F Committee had transcripts as part of the official record of this case.

Petitioner testified that he does not hold a business license from the City of Las Vegas or the County of Clark, II ROA 6:9-14, and that he had some kind of license from the state but did not know what type of license it was other than it is "whatever goes along with filing corporation

papers" II ROA 6:22-24. He testified that he made an anonymous telephone call to the County licensing agency regarding his tarot card 900-number but that the agency could not ascertain if he was a telephone answering service or a fortune teller. He states that he got the idea that if he did not fit into any of the categories "I was probably going to have a fair amount of problems" if he filed an application. II ROA 13:7-14. Petitioner also testified that he did not inquire whether running a business out of his home in a residential area would violate any zoning laws. II ROA 15:6-11.

Petitioner testified that if he operated a law business in Nevada for which he advertised that "...if you have problems in California and Texas, come on in, I'll help you in Las Vegas, I would certainly concede that that is conducting a law business here that probably requires a law license, even though the activity is somewhere else, because the clients are here." II ROA 24:11-19. Petitioner testified that the letterhead reproduced in Respondent's Appendix 1 was probably used in connection with his California or Texas matters and that it may have gone to clients, counsel for opposing parties, or it may have gone to the courts. II ROA 28:16-20. Petitioner admitted that the letterhead in question is still being used by him. II ROA 34:14-17. He further testified that although he does not recall it being sent to anyone in Nevada, "it may have gone". II ROA 36-37:24-2. Petitioner also testified that his reasoning for listing that he was an attorney on the letterhead advertising his 900-number was that a publication might be more willing to accept his advertising if it felt that, as an attorney, he were credible or non-controversial by virtue of that fact. II ROA 44-9-13.

Petitioner testified to the existence of two property tax liens in Los Angeles County, California regarding properties he sold. He stated that the liens were not discharged and that he has no intention of either discharging or challenging the liens. II ROA 55:9-24. He testified that he went through a hearing process and that he "didn't feel he got a fair hearing from the board on the issue" but that he did in fact present his case and lost. He did not appeal the decision. II ROA 57:1-23. He further testified that California would end up collecting eventually when he sold something else in the county but also stated that he did not own any other assets in the county. He anticipated that he would eventually receive some property through inheritance. II ROA 57-58. Petitioner agreed that he would not advise a client to adopt his attitude if an adverse result were rendered in the client's case, but that this was his own affair and "this is how I elected to handle it". Petitioner testified that although he did not know the exact amount of the obligation, it was "a couple, three thousand dollars." II ROA 58:8-28.

IV ARGUMENT

A. Petitioner Has Failed to Properly Invoke the Jurisdiction of this Court.

Petitioner has failed in two substantial respects to preserve and present the claims stated in his Petition for Writ of Certiorari. First, Petitioner did not raise and/or provide facts or authority for these alleged constitutional claims before the Supreme Court of Nevada for its initial determination. As will also be noticed in the present Petition before this Court, although Petitioner listed various issues in the Table of Contents to his Brief to the Supreme Court of

Nevada, he either failed to thereafter mention the issue again or did so with conclusory sentences unsupported by facts or citation to legal authority.

Secondly, the Certiorari jurisdiction of this Court is improperly invoked by Petitioner under 28 U.S.C. § 1254(1). Jurisdiction may only be invoked by Petitioner under 28 U.S.C. § 1257(a). Petitioner not only refers to the wrong Code section for invocation of the Court's exercise of Certiorari jurisdiction, he has also wholly failed to "draw into question" any "statute of any state on the ground of its being repugnant to the Constitution, treaties, or laws of the United States..." 28 U.S.C. §1257(a).

B. **Whether denying an applicant admission to practice law in a state for (A) failure to discharge a legally valid financial obligation imposed after notice and hearing, (B) for using letterhead listing the applicant as "attorney at law" with a Nevada address with no limiting language describing that the applicant is *not* licensed in the State of Nevada, and (C) for failing to adequately investigate the requirements and licenses necessary to operate a "900" tarot-card telephone service raises a substantial question regarding the applicant's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.**

Petitioner declares that denial of admission to practice law in the state of Nevada based on these three reasons violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution in that Nevada's application of the "good moral character" standard is

"arbitrary and capricious." Thus, each reason is addressed to show that Petitioner's denial was not arbitrary and capricious.

(1) FAILURE TO DISCHARGE A LEGALLY VALID FINANCIAL OBLIGATION

"The conduct of a bar applicant in satisfying his financial obligations has been widely recognized as a relevant factor in assessing good moral character." *Application of Gahan*, 279 N.W.2d 826, 830 (Minn. 1979), citing *In re Heller*, 333 A.2d 401 (D.C.Ct.App.), certiorari denied, 423 U.S. 840, 96 S.Ct. 70 (1975); *See also In re Cheek*, 246 Or. 433, 425 P.2d 763 (1967). The reasoning for this is that: "The failure of a person to honor his legal commitments adversely reflects on his ability to practice law, evincing a disregard for the rights of others." *Application of Gahan*, 279 N.W.2d 826, 830 (Minn. 1979), citing *Matter of Connor, Ind.*, 358 N.E.2d 120 (1976).

The record establishes that Petitioner admits to his choice to let languish valid property tax liens assessed against property he once owned Los Angeles County, California. II ROA 54:19-25, 55-6:20-4. The liens are in an amount of approximately two-thousand dollars. II ROA 59:19-22. However, Petitioner sold this property prior to the attachment of these liens. II ROA 55:9-16. Thus, the liens could not be satisfied by sale of the property. Consequently, pursuant to California law, the liens have attached to respondent personally. II ROA 55:9-16. Petitioner challenged the assessment of the property and was permitted to put forth his factual and legal arguments at a subsequent hearing. II ROA 57:1-14. As a result of the hearing, Petitioner in fact received a reduction in the value at which his property was

assessed. The assessment value of his property was decreased from $276,000 to $232,000. I ROA 103-4. Yet, Petitioner testified to the C & F Committee that he had "lost" the hearing. II ROA 57:16. Petitioner further stated that he did not seek an appeal of that decision. II ROA 57:17-20.

Both of these liens were filed against Petitioner in early 1994. II ROA 54:9-18. Rather than discharging these liens with a small portion of the $38,000.00 earned during the first ten (10) days of the opening of his in-home, unlicensed "Tarot-card" telephone business, Petitioner reiterates his conscious choice not to pay these liens in his testimony to the C & F Committee. II ROA 56:3-4.

In the instant case, it is not the position of Respondent that Petitioner's application was denied solely for failure to pay his California taxes, though, in light of the case law presented herein, it could have been so denied. However, Respondent's position is that Petitioner's application was also denied for using misleading letterhead designating him as "Attorney at Law" without limiting language that he is not licensed to practice in Nevada and for operating numerous "900" telephone numbers without adequately investigating the requirements and licenses necessary to operate such a business. Petitioner's failure to pay his property tax is simply one of the factors considered by the C & F Committee.

In some states, such conduct by an applicant constitutes the sole reason for denial of admission. In *Florida Bd. of Bar Examiners re G.W.L.*, 364 So.2d 454 (Fla. 1978), the Florida Supreme Court denied the admission to practice law of an applicant for failing to repay his student

loans by filing a premature bankruptcy petition. In that opinion the court stated:

> In our view, a finding of a lack of "good moral character" should ***not*** be restricted to those acts that reflect moral turpitude.
>
> . . .
>
> The record before us reflects that the petitioner ***suffered no unusual misfortune or financial catastrophe prior to his filing the bankruptcy petition. . . The filing of the bankruptcy petition was not illegal,*** but in our view it was done in such a morally reprehensible fashion that it directly affects his fitness to practice law.
>
> . . .
>
> . . .
>
> The petitioner's course of conduct in these personal affairs raises serious questions concerning the propriety of his being a counselor to others in their legal affairs, and ***is rationally connected to his fitness to practice law.***

Florida Bd. of Bar Examiners re G.W.L., 364 So.2d 454, 458-59 (Fla. 1978). (Emphasis added). In rendering its decision, the Florida Supreme court noted:

> [I]t must be with recognition that it is not the act of filing for bankruptcy but the circumstances surrounding this particular bankruptcy application that demonstrate a lack of good moral character and justify the Board's decision. *G.W.L.* at 455.

In *Application of Gahan*, 279 N.W.2d 826 (Minn. 1979)(a case which cites *G.W.L.*), the Supreme Court of

Minnesota denied admission to applicant Gahan, though Gahan had successfully completed the Minnesota Bar Examination, solely for failure to satisfy his legal obligations by having his student loans discharged via bankruptcy. As for its consideration of Gahan's actions in light of his bankruptcy, the court made it clear that a denial to admission to the bar of the state of Minnesota cannot be based on the fact that an applicant has filed for bankruptcy nor may it be based on an applicant's refusal to reinstate an applicant's financial obligations discharged in bankruptcy. *Gahan* at 828. The court correctly noted "(A)ny refusal so grounded would violate the Supremacy Clause of the United State Constitution since applicable Federal law clearly prohibits such a result." *Gahan* at 828.

However, the court then stated the following when discussing Gahan's moral integrity for discharging his indebtedness via bankruptcy in the absence of a showing by Gahan of a compelling hardship beyond his control justifying such a discharge:

> A flagrant disregard of this repayment responsibility by the loan recipient indicates . . . a lack of moral commitment to the rights of other students and particularly the rights of creditors. Such flagrant financial irresponsibility reflects adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law. ***It is appropriate to prevent problems from such irresponsibility by denying admission, rather than seek to remedy the problem after it occurs and victimizes a client.***

Gahan at 831.(Emphasis added). One of the central reasons for denying Gahan's admission was due to the fact that though he had the money to pay this debt, he chose instead to discharge it in bankruptcy. *Gahan* at 831-32.

In the instant case, Petitioner cites various passages from numerous Nevada cases presumably in support of his argument that under Nevada law, the State Bar of Nevada is precluded from denying him admission solely because of his failure to pay valid California property taxes. For example, Petitioner cites *Ex Parte Abbatangelo*, 80 Nev. 584, 397 P.2d 182 (1964), in support of this proposition. Contrary to Petitioner's position, *Abbatangelo* exemplifies the fact that Nevada aligns itself with other jurisdictions, such as Florida and Minnesota, which would deny admission solely for failure to satisfy an applicant's valid financial obligations ***where there is no showing by that applicant of a compelling hardship beyond his or her control.*** In his Petition, Petitioner states that:

> The Nevada Bar held:
>
> "Failure to satisfy the Los Angeles County tax liens demonstrates, in itself, that the applicant has failed to carry the burden of establishing his fitness to practice law in the State of Nevada."
>
> The Nevada Supreme Court disagreed in Ex Parte Abbatangelo . . ., where an attorney was admitted to practice in Nevada despite ***proven*** forgery and failure to support the attorney's wife and minor children.

(Petition pp.15-16). (Emphasis added). Petitioner then implies that admission of Abbatangelo to the Nevada State

Bar was due to the numerous favorable communications from many Pennsylvania and Las Vegas attorneys. Petitioner also implies that these past bad acts of Abbatangelo were therefore viewed as inconsequential by the Supreme Court of Nevada in light of these favorable communications. This argument exemplifies Petitioner's lack of candor to even this Court. The true reason Abbatangelo was admitted to practice law in Nevada was not because of numerous letters of recommendation, but because he was later absolved of the alleged forgery when his ex-wife admitted in an affidavit to the Supreme Court of Nevada that her "accusation of forgery was done for the sole purpose of aggravating Petitioner [Abbatangelo]." *Abbatangelo* at 183. Furthermore, the court in *Abbatangelo* found that she was "well aware of all bank loans obtained by petitioner when signing her name; that she purchased items with the proceeds of these loans; and that petitioner was of high professional moral character." *Abbatangelo* at 183. The court then made it a point to note that ". . . [T]he adverse recommendation of the board was due ***chiefly*** to the situation created by [his ex-wife's] conduct." *Id.* However, Petitioner conveniently omits these facts from his Petition.

As for Abbatangelo's failure to pay child support and alimony, the court stated that it was ***"not a matter of choice."*** *Id.* (Emphasis added). In this respect, the Supreme Court of Nevada found:

> After arriving in Nevada, his total income between September 1, 1961 and December 23, 1961 was about $600. During the following month he was unemployed. From January 27, 1962 until the end of April 1962 he earned approximately $300 per month. ***From April through August 1962 he made small***

> ***monthly payments to Victoria for support. In October 1962 she received $500 which had been owed to petitioner and which he directed to be paid to her. Subsequent to the action of the board, petitioner borrowed money and paid all existing obligations for alimony and child support.*** We believe that under the circumstances of this case, and particularly because of the conduct of Victoria, petitioner should not be penalized to the extent of denying him admission to the Nevada state bar because of said delinquency regarding alimony and child support. Although he did sign his wife's name in connection with the Pittsburgh bank loan, it is apparent that he did it with her consent and ***there is no evidence that he intended to defraud the bank.***

Id. at 184. (Emphasis added). Aside from being vindicated of the accusation of forgery, Abbatangelo ***paid*** his child support and alimony despite his financial difficulties. Once again, Petitioner conveniently omits these facts from his Petition.

In the instant case, Petitioner has not paid his taxes despite his admittedly successful unlicensed "900" businesses. Such conduct leads one to the logical conclusion that Petitioner ***consciously chooses*** not to do so. This in-turn leads one to the logical conclusion that Petitioner manifests a flagrant disregard for his creditors as well as for the rights of others. Hence, there exists a rational connection between this conduct and his fitness to practice law.

(2) LETTERHEAD

Petitioner cites *In re Waters*, 84 Nev. 712, 447 P.2d 661 (1968), in support of his use of letterhead designating him as an Attorney without designating that he is unlicensed in Nevada. Again, Petitioner conveniently leaves out important facts that distinguish this case from the instant and mis-analogizes them to the *Waters* case. First, Respondent did not charge Petitioner with the unauthorized practice of law, nor does Respondent use Petitioner's letterhead to support the same, as did Respondent in *Waters*.

Second, Petitioner leaves out the fact that in *In re Waters*, the recipients of Waters' letterhead "believed that Waters was a Texas lawyer and so testified on deposition." *Id.* at 664. To date, neither Respondent nor Petitioner know to whom Petitioner sent this letterhead. Nor does Respondent know if any recipients of this letterhead were aware of Petitioner's licensure status. On March 3, 1994, Petitioner stated at the Functional Equivalency hearing: "I don't know what matters I've used it on." II ROA 46-11-17. On August 19, 1994, before the C & F Committee, the following dialogue between the Chairman and Petitioner occurred:

> CHAIRMAN: Were you sending it [the letterhead] to anyone in the State of Nevada?
>
> APPLICANT: I don't remember sending it to anybody in the State of Nevada. It may have gone, but I don't remember sending it to anybody there.

II ROA 36-37. Yet petitioner makes the following definite statement in his Petition: "Petitioner made no solicitations

and corresponded ***only*** with existing clients or opposing attorneys in California and Texas." (Petition for Writ p.15). (Emphasis added). Thus, Petitioner provides this Court with information that is at odds with his testimony before the C & F Committee.

Third, Petitioner also states: "The conduct of the applicant in ***In re Waters***, supra, is more egregious than that of Petitioner." (See Petition for Writ p.15). Petitioner fails to point out that much of the conduct for which Waters was denied admission occurred many years prior to Waters' application for admission: "More than ten years ago the applicant attempted to deceive the University of Texas School of Law . . ." ***Waters*** at 662-63. Moreover, Waters was allowed into another law school despite its full knowledge of the previously mentioned deception. *Id.* at 663. Thus, Waters was apparently deemed rehabilitated or given a second chance for this deception.

In the instant case, it is Petitioner's ***current*** conduct reflects adversely on his character and fitness to practice law. Respondent has not denied Petitioner admission to practice law in Nevada based on misconduct occurring more than 10 years ago but rather on the basis of his **current** moral character and fitness.

(3) PETITIONER'S VARIOUS UNLICENSED "900" TELEPHONE SERVICES

On March 3, 1994, the Functional Equivalency Committee brought to Petitioner's attention the fact that Petitioner's numerous 900-number businesses were unlicensed. III ROA 114:14-19. Petitioner responded to questions regarding whether he has a business license with

testimony to the effect that he thought he had a license from the State of Nevada but he was unsure whether he had one from the City of Las Vegas or County of Clark. III ROA 114-115:16-16.

Five months later, on August 19, 1994, the C & F Committee inquired as to whether Petitioner had acquired a business license from either the City of Las Vegas or Clark County, Nevada, to which Petitioner responded: "I don't believe I do. I think that the only license I think we have is one that we got from the State." II ROA 6:9-14. Petitioner testified that he made an anonymous telephone call to the County licensing agency regarding his tarot card 900-number but that the agency could not ascertain if he was a telephone answering service or a fortune teller. He then states that his reason for not licensing was because he got the idea that if he did not fit into any categories that he was "probably going to have a fair amount of problems" with filing the application. II ROA 13:7-14. Petitioner also testified that he did not inquire as to whether running a business out of his home, located in a residential area, would violate any zoning laws. II ROA 15:6-11.

The relevant portion of Section 6.04.010 of the Clark County Code (Appendix 2) states the following:

> It is ***unlawful*** for any person, firm, association, partnership, or corporation, to commence, carry on, engage in or continue . . . in the county, outside the incorporated cities and towns, both within and without unincorporated cities and towns, ***any business***, trade, occupation or employment upon which a license tax is imposed . . . without first

> paying such license tax and procuring such license as hereinafter provided.

Clark County Code § 6.04.010 (1983). (Emphasis added). Further, § 6.04.110 of the Clark County Code prohibits the issuance of a business license "unless the applicant shall have a fixed place of business in a proper zone . . ." Clark County Code § 6.04.110 (1980). (Appendix 2). Failure to comply with these provisions is a misdemeanor. Clark County, NV., Code § 6.04.150 (Ord. 1608 § 4, 1994,:Ord. 631 § 1, 1979). (Appendix 2).

A reasonable inference may be drawn from Petitioner's own testimony and the fact that between the March 3, 1994, Functional Equivalency hearing and the August 19, 1994, Moral Character and Fitness hearing. The inference is that Petitioner intends to allow the matter regarding his noncompliance with the Clark County business license code to languish just as he has with his California property taxes. This further evidences not only his flagrant disregard to Clark County as a possible legitimate creditor, but also his flagrant disregard for the law. Thus, there exists a rational connection between this willful noncompliance of Petitioner and his fitness to practice law.

C. Whether the bare allegation, without factual or legal support, that Nevada utilizes a different standard to evaluate the character and moral fitness of non-ABA law school graduates than that which is utilized for ABA law school graduates is sufficient to allege a violation of an unstated U.S. Constitutional provision.

This issue was not presented to the Supreme Court of Nevada for consideration, see Petitioner's Appendix A and I, and should therefore not be properly considered in Petitioner's Petition for Writ of Certiorari.

In his Petition for Writ of Certiorari, Petitioner states that he was denied admission because the State of Nevada either does not like Petitioner or "they don't like his educational background, or both." Petition, pg. 23. Petitioner then asserts that a political problem was created when Nevada Law School graduates, which was unaccredited by the ABA, were allowed to take the Nevada bar examination after a successful challenge in the Supreme Court of Nevada. Petitioner cites *Bennett v. State Bar*, 103 Nev. 519, 746 P.2d 143 (1987) to support his position that a "political problem" exits or existed in the state of Nevada. However, Petitioner's opinion that such a political problem existed is not related by Petitioner to his assertion that Nevada employs different standards for ABA and non-ABA educated students in assessing moral character and fitness.

Nowhere in his Petition does Petitioner allege facts or law which would indicate how he was treated differently from a graduate of an ABA-accredited institution nor any

facts or law that would support his contention that different standards exist. Petitioner has failed to present his argument on this issue and, as such, Respondent is in the position of proving that something does not exist when there is absolutely no evidence, legal or factual, that would support the accusation that it does exist.

D. Whether the State has a legitimate interest in protecting the confidentiality of information concerning persons who apply to practice law in the state of Nevada by keeping decisions regarding moral character and fitness investigations and hearings of applicants to that state's bar confidential unless the person applying for admission waives this confidentiality.

Again, Petitioner did not address this issue before the Supreme Court of Nevada. Although he raised the issue in his Table of Contents before the Supreme Court of Nevada (Petitioner's Appendix I) his sole argument was limited to one paragraph (Appendix I, pg. 23) that merely recited his argument that he was denied due process because the files of the State Bar of Nevada are confidential pursuant to NSCR 70.5 (Respondent's Appendix 2). Nowhere in the Brief before the Supreme Court of Nevada is any citation to the United States Constitution nor case authority from anywhere outside the state of Nevada.

In the Petition for Writ of Certiorari, Petitioner's argument regarding this issue is limited to the following:

> Rule 70.5 of the Nevada Supreme Court Rules

> (Appendix C) makes all disciplinary and admission proceedings confidential and not reported. This deprived Petitioner of procedural due process because no judicial interpretations of the rules are available. Rule 70.5 allows the State Bar of Nevada and the Nevada Supreme Court to make arbitrary, capricious, and **different** decisions in private without public scrutiny. (Emphasis in the original.)

(Although Petitioner claims to have reproduced NSCR 70.5 in Appendix C, it is not contained therein but is reproduced in Respondent's Appendix 2.)

NSCR 70.5 recites that an applicant to practice law in the state of Nevada has the **right** to have his or her admission papers, the results of any investigation, the applicant's grades, and any petitions for review filed in the supreme court remain confidential if he or she so chooses. The applicant can waive the confidentiality protections afforded by this Rule if desired. This is a protection for the applicant which is designed to preserve the confidentiality of the investigation and examination process, not to "hide" anything from an applicant. It is only the extensive, personal information required within the certification process that is intended to be kept confidential, not the Supreme Court of Nevada decisions stemming therefrom. Indeed, Petitioner had no trouble citing to Nevada cases dealing with the application process, see Petitioner's Table of Authorities, pg.

xiii. Petitioner is not being candid with this Court in his claim that no judicial interpretations of the rules are available. Once again, Petitioner's argument is not developed within his Petition and is not supported by either the facts of this case or the law.

E. Does a state statute providing for appeal to the state supreme court of adverse recommendations affecting applicants for admission to the practice of law violate the Due Process or Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because it does not provide for a "preliminary decision" prior to entry of formal Findings of Fact, Conclusions of law and Recommendations by a hearing panel recommending denial of admission from which the appeal must be taken?

This issue, like the other issues presented in the Petition for Writ of Certiorari, was not presented to the Supreme Court of Nevada. In fact, the Brief filed by Petitioner before that Court (Petitioner's Appendix I) does not mention this issue even in passing. In addition, the Petition for Writ of Certiorari also fails to mention this issue except in Petitioner's Questions Presented.

Respondent knows of no provision, and Petitioner fails to mention any such provision, of the U.S. Constitution or federal law that requires any order of any tribunal to be preceded by a "preliminary decision" from which an aggrieved can attempt to argue or present new facts. An appeal of an adverse decision of the C & F Committee is required to originate from the Findings and Recommendations of the Committee, NSCR 64, not some "preliminary decision" that is not issued. Indeed, Petitioner

cites no legal authority that would even permit the Committee to issue such a "preliminary decision."

V. CONCLUSION

Petitioner has failed to properly invoke the jurisdiction of this Court as well as to validly present legal arguments, citation to relevant case authority or relevant facts that would support the invocation of this Court's Certiorari jurisdiction. His inability or failure to articulate legal or factual reasoning behind his Questions Presented to this Court make a response to his contentions especially difficult if not impossible as it is difficult to respond to the unknown or unstated.

In addition to the procedural limitations, Petitioner has failed to show that his denial for admission to practice law in the state of Nevada on moral character and fitness grounds was improper for reasons that contravene the Due Process or Equal Protection provisions of 14th Amendment to the United States Constitution. Instead, the denial of Petitioner's application was proper for reasons related to his current moral character and fitness.

On the basis of the foregoing, Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully Submitted

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APPENDIX

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Rule 70.5. Confidentiality.

Except as otherwise provided by these rules, the contents of any application for admission to practice law in this state, the results of any investigation, including the transcript of any hearing, documentation regarding the application or applicant, and the grades of an individual applicant shall remain confidential. A petition for review filed in the supreme court pursuant to these rules shall remain confidential. An applicant may waive confidentiality with respect to such petition by filing a verified statement with the supreme court clerk.

Chapter 6.04

GENERAL PROVISIONS

Sections:

6.04.005	Definitions
6.04.010	License required.
6.04.020	Employees exempt.
6.04.030	Nonapplicable when.
6.04.040	Nonpayment-Liability-Debt to county.
6.04.050	Payment due-Notification-Affidavit concerning change of ownership or location.
6.04.060	Delinquency-Reinstatement-Special fees-Underestimates.
6.04.070	Transfer of ownership, change of location or business name -Fees.
6.04.080	Display of license.
6.04.090	Issuance-Revocation-Nonrenewal-Reasons.
6.04.095	Temporary license on transfer of ownership.
6.04.100	Revocation-Nonrenewal-Hearing-Limited license.
6.04.105	State License
6.04.110	Compliance with zoning.

6.04.120 Conducting business at location other than licensed.
6.04.130 Permanent place licenses for vending machines.
6.04.140 Penalty for violation.
6.04.150 Authority to issue citations.

6.04.005 Definitions. As used throughout this chapter, and Titles 4, 7, 8, 9 and 12, the words and terms have the meanings ascribed to them unless a different meaning clearly appears in the context where used, or unless specifically defined in an applicable sections.

"Applicant" means any person who has applied for a county business license, approval of suitability, work identification card or any permit.

"Application" means documentation notifying the county of intent to:

(1) Seek permission to engage in business;

(2) Seek approval of suitability;

(3) Seek work identification card or any permit.

"Board" means the board of county commissioner of Clark County, Nevada.

"Business" means any business, commercial enterprise, trade, occupation, calling, profession, vocation or activity engaged in, conducted or carried on by any person, agent or employee for the purpose of gain, benefit or advantage, either direct or indirect.

"Charitable organization" means an organization which:

(1) Has been in existence for more than three years;

(2) Has one hundred or more members;

(3) Is exempt from federal income tax pursuant to Section 501 of the United States Internal Revenue Code;

(4) Devotes its net earning exclusively to religious, charitable, scientific, literary, educational or fraternal purposes;

(5) Has received from the Secretary of State its certificate of nonprofit corporation, association or society.

"Corporation" includes and refers to any and all natural persons acting or purporting to act in any managerial capacity or exercising or purporting to exercise any control as to any or all of the day-to-day business operations and decisions of its corporate business in Clark County, Nevada whenever a background investigation is required for licensure of a corporation.

"County" means, unless otherwise indicated, that portion of Clark County outside the incorporated cities and towns, both within and without the unincorporated cities and towns.

"Department" means the department of business license of Clark County.

"Director" means the director of the department.

"Employee" means any person who performs services for another for hire, salary, wages or any other kind of compensation, whether or not the services are casual, temporary or permanent, and whether or not the contract of service is express or implied, oral or written, and/or when the employer withholds federal income tax.

"Establishment" means any business conducted in or upon any premises and includes any contiguous buildings, improvements, equipment and facilities used or maintained in connection with such business at the same location.

"Gross sales" means the gross volume of business from all sales, service and other business transactions as

measured by gross revenue and gross receipts.

"Gross revenue" means all revenue received by the business from sales, service and other business transactions minus deductions only for returns, refunds, state sales tax, and discounts, and allocation and apportionment of income for net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business or corporate stock tax which is subject to the tax jurisdiction of another state.

"License" means the document granting permission to the applicant to engage in business issued by or through the department.

"Licensee" means any person to whom a valid license has been issued pursuant to Titles 4, 6, 7, 8 or 9.

"License fee or license tax" means any money required by law to be paid to renew or maintain a current license.

"Location" means the place where the business is to be operated at or from.

"LVMPD" means the Las Vegas metropolitan police department.

Moral Turpitude. A crime involving "moral turpitude" is any crime, including conspiracy to commit the crime, which:

(1) Involves an overt act of intentional dishonesty or fraud for the purpose of personal gain; or

(2) Involves an act of baseness, vileness or depravity in private and social or public duties which a person owes to his fellow person or to society in general, contrary to the accepted rule of right and duty between person and persons.

In any license category or work identification card matter in which a conviction of a crime involving moral turpitude is grounds for disqualification for a license or work

identification card, the board may, upon receiving five affidavits testifying to the good moral character of the applicant and a letter, if an employee, from the licensee that acknowledges disclosure of any criminal history and a willingness to employ said applicant, grant such license or work identification card if the conviction occurred more than five years prior to the application pursuant to Chapter 6.10 or more than one year if pursuant to a specific chapter provision as to moral turpitude and, after reviewing the applicant's tax and procured a license according to the terms and provisions of this title, and such person shall be liable in a civil action in the name of the county as plaintiff, in any court of competent jurisdiction, for the recovery of the amount of license tax imposed by this title, and for the costs of suit. (Ord. 134 § 18, 1961)

6.04.050 Payment due - Notification - Affidavit concerning change of ownership or location. (a) All business required to have a license under the provisions of this code shall be notified, before the due date, of each license fee required; provided, however, that the failure to notify any lawful business shall not be held to waive the payment of a business license; and provided, further, that the actual receipt of such notice is in no case required.

(b) Any business licensed b the county and where there has been no change of ownership or location is required only to pay the license tax as set out in this title and notwithstanding other provisions of this title is not required to make application for a license, however, it is required to furnish to the director of business license the following information:

(1) An affidavit stating whether there has been any change in ownership in the business of the applicant or applicants during the preceding calendar year, and if there

has been any change, that such change was made in compliance with NRS 104, Article 6;

(2) If the applicant or applicants were engaged in business under a fictitious name, an affidavit that the applicant or applicants have complied with the provisions of NRS 602;

(3) Where the license tax depends upon the receipts or amount of the business which the applicant, or the firm of which he is a member, or for which he is attorney, or the association or corporation of which he is president, secretary or managing agent, will do, the applicant shall state under oath the amount of business which said business did do in the next preceding period for which the license may be issued. (Ord. 709 § 11, 1980: Ord. 621 § 11, 1979: Ord. 134 § 19, 1961)

6.04.060 Delinquency - Reinstatement - Special fees - Underestimates. (a) All licenses other than gambling and liquor licenses shall become delinquent if not paid within fifteen days after the due date. If payment is made after fifteen days and before thirty days after the due date, five percent of the license fee shall be assessed as a penalty charge. All licenses for which the fees have not been paid within thirty days after the due date shall be deemed revoked. Any such license shall not be reinstated until the five percent penalty fee and a ten percent reinstatement fee shall have been paid.

(b) In all cases where a material underestimate has been made b the licensee, the licensee making such material underestimate, or the company represented, shall be required to pay for a license for the next period for which the licenses may be issued, double the sum otherwise required and the director of business license shall have the power and authority to enter any store, building, or any other place in

which such business is being conducted at any time during business hours and have access to the books of such business for the purpose of ascertaining the amount of sales made. The information received from the licensee under the provisions of this section shall be confidential and available only to those county officials concerned in such matters. (Ord. 709 § 12, 1980: Ord. 621 § 12, 1979: Ord. 134 § 20, 1961)

6.04.070 Transfer of ownership, change of location or business name - Fees. (a) Upon the transfer of ownership of a business licensed under this title for which a license fee has already been paid, the license fee paid by the transferor shall be fifteen dollars. The transferee shall apply for the license and shall be entitled to receive the same upon the payment of the required fee; provided, that the transfer is approved by the director upon compliance with all provisions of this chapter.

(b) A licensee shall have the right to change the location of the licensed business, provided he shall obtain permission from the director. A licensee shall file an application upon a form to be provided by the director who shall approve such transfer if the new location meets all the requirements of this code; and provided further, such applicant shall pay a fifteen-dollar regulatory transfer fee upon filing of such application.

(c) A transfer of ownership or change in location shall be inspected and approved by the fire department and the building and zoning department to ensure safety and compliance with Section 25.04.260 and NRS 278.583; however, if a location is licensed for a particular type of business, the new owners conducting the same type of business at that location may not be required to obtain approval of zoning, building and fire.

(d) Changes in Corporate Officers, Directors and Stockholders. In the case of a corporate licenses, any and all changes in the officers or owners shall be reported to the director within twenty days of the appointment or election of such officers and directors, or acquisition by such stockholder or stockholders, as the case may be, and such officers, directors or stockholders shall be required to qualify for a license as required herein.

In the event fifty percent or more of the issued stock in a corporate licensee is sold, it shall be deemed a sale of the business, and the license shall expire. The corporation must apply for a license as a new applicant, although a temporary license may be issued pending a required investigation. (Ord. 1371 § 1, 1992: Ord. 709 § 13, 1980: Ord. 621 § 13, 1979: Ord. 578 § 2, 1978: Ord. 134 § 21, 1961)

6.04.080 Issuance - Revocation - Nonrenewal - Reasons. (a) All business licenses issued under the provisions of this title shall be subject to revocation or nonrenewal by the board of commissioners for any failure of such licensee, his agents, servants, or employees while engaged in the conduct of the licensed business, to comply with any of the provisions of this code.

(b) A business license issued to any licensee under the provisions of this title shall not be renewed, or shall be subject to revocation as the case may be, if such licensees shall maintain or carry on any business in any building or structure which is structurally unsafe, or not provided with adequate egress, or which constitutes a fire hazard, or which is otherwise dangerous to human life or safety, or which in relation to existing use constitutes a hazard to safety or health, or public welfare, by reasons of inadequate maintenance, dilapidation, obsolescence or abandonment; or

if such business is a nuisance, a menace to the public health or detrimental to the peace or morals of the county.

(c) The director shall not issue a new license or renew an existing license to any applicant to operate a business in any building location that has been determined by the

building inspector to be an unsafe building as defined herein, but shall promptly refer such application to the board of commissioners for appropriate action.

(d) The director shall not issue a new license to any applicant to operate a business when a state license is required for a profession until proof of the current state license is provided to the department by the applicant. If the state license is revoked, removed or relinquished, the county business license is automatically revoked.

(e) New applications will be approved or denied by the current planning division of the department of comprehensive planning within ten working days from receipt of inspection form prior to any licensing issuance or denial by the director.

(f) New applications will be approved or denied by the building, fire, and health departments (when applicable), within twenty working days from receipt of inspection form prior to any licensing issuance or denial by the board or director.

(g) All business licenses issued under the provisions of this title shall be subject to revocation or nonrenewal by the board of commissioners if the applicant has made false, misleading or fraudulent statements with respect to any material fact contained in the business license application.

The director and any other officer designated by him shall have the power and authority to enter any store,

building or other place in which such business is being conducted at any time during the business hours and have access to inspect the business for the purpose of ascertaining compliance with the provisions of the Clark County Code.

(h) New applications will be approved or denied by the director within forty-five working days of receipt of a complete application or referred to the board for approval or denial of license as required within sixty working days of receipt of a complete application unless a different time period is specifically provided within the appropriate licensing chapter. (Ord. 1608 § 1, 1994: Ord. 1448 § 1, 1992: Ord. 1367 § 1, 1992: Ord. 709 § 14, 1980: Ord. 621 § 14, 1979: Ord. 134 § 23, 1961)

6.04.095 Temporary license on transfer of ownership. (a) Nonregulated Businesses. In order to protect the goodwill, clientele and assets of a licensed business, the director may upon request and the filing of a complete application and payment of all fees, issue and temporary license for a period not to exceed forty-five working days.

Upon licensure, all conditions and restrictions imposed upon a former licensee are imposed upon the new licensee unless specifically modified by the authority imposing such conditions.

(b) Regulated Businesses. In order to protect the goodwill, clientele and assets of a licensed and operating business during investigation of a new or proposed owner, upon request the director may, upon the filing of a complete application and payment of all fees, issue a temporary license for a period not to exceed forty-five working days. The board may extend the temporary license of a regulated business for a period not to exceed ninety working days in total for the purpose of completing the application process.

Upon licensure, all conditions and restrictions imposed

upon a former licensee are imposed upon the new licensee unless specifically modified by the authority imposing such conditions. (Ord. 1608 § 2, 1994)

6.04.100 Revocation-Nonrenewal-Hearing-Limited license. The board of commissioners may upon complaint, or upon its own motion, cite any licensee to appear before it or its hearing officer at any time to show cause why the license of any licensee shall not be revoked or renewed, and at or before the hearing, written charges shall be made against the said licensee specifying therein the facts which form the basis of the charges. At such hearing, or any adjournment thereof, the licensee may present a reasonable number of witnesses, and such other evidence may be produced as may be relevant for the consideration of the board of commissioners.

After the hearing by the board or its hearing officer, the board may then grant, deny, revoke, or condition the license as it deems proper. As to businesses in unsafe buildings, the license shall be revoked or renewal refused only in the following manner:

The board may, after hearing, grant a limited license in such unsafe building, for a period to be determined by the board in hardship cases, provided, that the applicant shall have shown due diligence in attempting to correct such unsafe condition or moved to an approved location, and provided, further, that such licensee shall furnish liability insurance to hold the county harmless in an amount to be determined by the board of commissioners.

A revocation of a business license of failure to renew a business license as the case may be, shall be ordered only by the majority vote of the members of the board of commissioners present at the time when such matter was considered. (Ord. 1448 § 2, 1992: Ord. 1367 § 2, 1992: Ord.

134 § 24, 1961)

6.04.105 State license. No business license shall be issued by the director to applicants therefor in accordance with this title unless the applicant has obtained any required state license for the business profession and provide the department with a copy of the required state license. (Ord. 1608 § 3, 1994)

6.04.110 Compliance with zoning. No business license shall be issued by the director of business license to applicants therefor in accordance with this title unless the applicant shall have a fixed place of business in a proper zone in accordance with Title 29 of this code and shall actually carry on and conduct such business from the address for which the license shall have been issued. (Ord. 709 § 15, 1980: Ord. 621 § 15, 1979: Ord. 134 § 25, 1961)

6.04.120 Conducting business at location other than licensed. In the event a licensee shall conduct his business at a location other than the place for which the license was issued or shall fail to conduct his business at the place for which the license shall have been issued, the board of commissioners shall revoke such license forthwith and no new license shall be issued to such licensee without approval of the board of commissioners first having been obtained. (Ord. 134 § 26, 1961)

6.04.130 Permanent plate licenses for vending machines. Permanent plate licenses shall be issued for cigarette machines and other similar devices or machines, regardless of whether fees are paid annually, semiannually, or on any other basis according to the following method:

(a) Plate licenses shall be attached to the machine

licensed and shall be coded to indicate the license fee;

(b) Plate licenses for cigarette machines may be transferred from one machine to another at the same business location;

(c) Plate licenses for cigarette machines may be transferred from one approved location to another approved location with the approval of the sheriff and/or board of commissioners;

(d) Plate licenses shall remain the property of the county and shall be returned to the county upon termination of the license for any reason:

(e) Upon the approval of an application for additional licenses, the fee for such license shall be prorated so that the licensee's plate license fees will all be due and payable at the same time;

(f) Plate licenses shall be licensed at the rate of ten dollars per machine semiannually;

(g) A charge of ten dollars shall be made for the replacement of a lost, mutilated, damaged plate license or permanent license frame;

(h) Notwithstanding other provisions of this section, facsimiles of the license plates in form of a gummed label may be issued to the licensee; such facsimile shall be attached to the side of the glass not accessible to the general public and shall be so placed as to be easily read from outside the machine. (Ord. 313 § 92, 1969:Ord. 139, 1961: Ord. 134 § 27, 1961)

6.04.140 Penalty for violation. Except as otherwise specified, every person, firm, association, partnership, corporation, institution or agency violating any of the provisions of Chapters 4.08 and 4.09 Of Title 4 and Titles 6, 7 or 8 shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars or

imprisonment of not more than six months in the county jail, or by both such fine and imprisonment. A separate offense shall be deemed committed on each day during or on which a violation occurs.

In addition to the penalties above-named any person, firm or corporation convicted of willfully violating any of the provisions of this code shall be subject to having his or its license to do business within the county revoked by the board of commissioners. (Ord. 1510 § 1, 1993: Ord. 847 § 3, 1983: Ord. 134 §§ 28, 30, 1961)

6.04.150 Authority to issue citations. Licensing agents, the director and the assistant director of the department of business license are authorized to prepare, sign and serve misdemeanor citations, pursuant to NRS Chapter 171 to enforce the provisions of Titles 4, 6, 7 and 8 of this code, and shall diligently prosecute the violation thereof. (Ord. 1608 § 4, 1994: Ord. 631 § 1, 1979)

Supreme Court, U.S.
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No. 95-987

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1995

CLARK GAREN,

Petitioner,

vs.

SUPREME COURT OF NEVADA,
BOARD OF BAR EXAMINERS OF THE
STATE BAR OF NEVADA,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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State Bar of Nevada vs. Claiborne, (1988), 104 Nev. 115, 756 Pac. 2d 464 2,

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OTHER PUBLICATIONS:

California Lawyer, January, 1996 edition, page 23 8

California Bar Journal, December, 1995, pages 9 - 10 8

I. JURISDICTION

This Court has jurisdiction over this matter under 28 U.S.C. 1257(a) because this is a final judgment rendered by the highest court of a state where a title, right, privilege, or immunity is claimed under the Constitution of the United States. The Petition cites the wrong Code section, but also cites other authorities establishing jurisdiction, so Respondent is not prejudiced by the incorrect citation.

II. FEDERAL QUESTIONS WERE PRESENTED

Respondent's brief concedes Petitioner presented denial of procedural due process to the Nevada Supreme Court. Respondent claims Petitioner was inept in the presentation. This Court considers any issue raised before the lower court, including one presented ineptly. (Konigsberg vs. State Bar of California, 1957 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d. 810)

Denial of Procedural Due Process is a factual issue. The Nevada Supreme Court reviewed the transcripts of the hearings establishing the lack of procedural due process, and elected to ignore the merits of the argument and rule on technical matters. Respondent now limits its defense of due process to technical issues, again ignoring the merits. Perhaps Respondent does not address the merits because Petitioner really was denied due process.

For example, the Nevada Supreme Court rules require Petitioner to pay for a transcript of all hearings, but do not provide for Petitioner to be given a copy. Respondent has **never** given Petitioner a transcript of the proceedings. The Respondents are given copies of the transcripts, and copies of the hearing transcripts were even given to the State Bar of Washington, despite the confidentiality requirement of Nevada Supreme Court Rule 70.5. Transcripts are made available to everyone but the Petitioner! So much for procedural due process.

III FAILURE TO PAY A FINANCIAL OBLIGATION

The standards for admission in Minnesota and in Florida have **nothing to do** with the admission standards in Nevada. The failure of the Respondent to cite one single **Nevada** case in which admission was denied or discipline imposed because of failure to pay student loans or any other creditor proves that Nevada is only imposing this standard on Petitioner!

In 1994, Nevada admitted a felon after his conviction for being a major drug smuggler. (In Re Birmingham, 110 Nev. 70, 866 Pac. 2d 1150)

In Nevada, conviction of willful failure to file Federal Income Tax Returns is not a crime of moral turpitude (In Re Cochrane, 92 Nev. 253, 549 Pac. 2d 328)

In Nevada, the filing of false federal income tax returns is not a basis for discipline. (State Bar vs. Claiborne, 104 Nev. 115, 756 Pac 2d 464)

In Nevada, the failure to pay spousal and child support and forgery of notes is not a basis for denial of admission. (Ex Parte Abbatangelo, 80 Nev. 519, 746 Pac. 2d 143)

In Nevada. cheating on the L.S.A.T. is not a basis for denial of admission. (In Re Waters, 84 nev. 712, 447 Pac. 2d 661.

Respondent has failed to address or distinguish any of these prior admissions, and instead justifies its action on decisions from other jurisdictions. By not addressing these issues, Nevada appears to concede it applied **different** standards to Petitioner, presumably **because** he is a graduate of a non A.B.A. California law school.

In Application of Gahan, (1979) 279 N.W. 2d 826, the applicant obtained the benefits of education by student loans; then arranged his property exemptions to keep everything intact (including his Jaguar automobile) except the student loan obligation, and then discharged the obligation in bankruptcy even through he could afford to have paid the loan. In Florida Board of Bar Examiners, Re: G.W.L., (1978) 364 So. 2d

454, Florida also denied admission to an applicant who could have paid his student loan but elected not to do so.

Repayment of student loans is an emotional issue **because** it was wrong for students to make a living with their education without having to pay for it. This view is reflected in the Gahan decision, supra, on page 831:

> "A student loan is **entrusted** to a person, and is to be repaid to creditors upon graduation when and if financially able. ... A flagrant disregard of this repayment responsibility by the loan recipient indicates to us a lack of moral commitment to the rights of other students and particularly the rights of creditors. Such flagrant financial irresponsibility reflects adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law."

An unpaid property tax lien is different than a defaulted and discharged student loan. **Nothing** was **entrusted** to the Petitioner! No rights of other students or creditors were disregarded by Petitioner. Petitioner exercised his first amendment right of free speech to not pay a single, disputed tax lien he felt was wrong and unfair, and did nothing to stop the governmental agency from collecting the lien.

Excerpts from the transcript of the hearing (obtained from the State Bar of Washington) is a more accurate reflection of the testimony.

> Q. Are they a legitimate charge? Do you owe the money?
>
> A. I don't think they're legitimate. That's why I haven't paid them. I went through a hearing process and I established that what -- I established what I acquired them for.

And basically the -- I didn't feel I got a fair hearing from the Board on the issue. I was very distressed with they way they did the values.

Q. But you did have a hearing?

A. Yes, I had a hearing.

Q. Presented your cases?

A. I presented my case. I didn't think it was a fair hearing because I felt the board had already made up their minds in terms of what they were going to do. But I did have a hearing.

Q. And lost.

A. And lost.

Q. Did you take whatever appellate procedures were available to you to challenge that decision?

A. No, I did not.

Q. Now you're going to let it sit?

A. Now I'm going to let it sit. They will eventually end up collecting it when I sell something else in Los Angeles County.

Q. Do you own any other assets in Los Angeles County?

A. No, but I will. I will eventually have a parcel that would basically come to me through inheritance which I will have to sell -- I won't have to sell it, but I will sell it, and they'll end up getting paid.

Q. Do you think that attitude towards that legitimate debt or at least one you haven't thought was challengeable is a good attitude for a lawyer who may lose a case from time to time or have an adverse result for a client, is that the sort of advice you would give your client, don't worry about it?

A. Well, that isn't necessarily the advice I would give my client. I was very upset about it and this is my own affair and this is how I elected

to handle it.
Transcript, August 19, 1994, pp 57-58

Based on this testimony, Respondent finds Petitioner "had no intention of discharging or challenging the validity of the liens. He indicated he was going to allow the liens to languish, and if he ever sold any other real property in California he would pay the liens at that time" and concludes "The failure to satisfy the lawful tax liens in Los Angeles County and the applicant's cavalier attitude toward them establish his utter disregard and disrespect for lawful process." (Petition, Appendix H.) **This testimony does not support these findings!**

Petitioner exercised his right of free speech. Petitioner did not fail to honor his legal commitments in a way that reflects adversely on his ability to practice law. Petitioner did not show "flagrant financial irresponsibility reflecting adversely on an applicant's ability to manage financial matters and reflects adversely on his commitment to the rights of others, thereby reflecting adversely on his fitness for the practice of law."

Respondent's Brief shows this is an **isolated** instance not reflecting any financial instability of Petitioner or the ability of Petitioner to practice law. Respondent's Brief shows your Petitioner is financially stable and quite able to manage his financial matters. The testimonials attached as Appendix B show a strong commitment on the part of Petitioner to protect the rights of others.

Petitioner's presentation of the Abbatangelo case **is** accurate. Abbatangelo did not pay his child support or alimony and he did forge his wife's name to notes! The rationale for disregarding these actions is not relevant. The relevant fact is that Petitioner is the only applicant ever refused admission to Nevada for non-payment of a $3,000 property tax lien.

IV LETTERHEAD ISSUES

Respondent's Brief on the letterhead shows the inquisition Petitioner is subjected to.

Respondent quotes Petitioner "I don't remember sending it to anybody in the State of Nevada. It may have gone, but I don't remember sending it to anybody there" and claim this is contradicted by the statement, "Petitioner made no solicitations and corresponded **only** with existing clients or opposing attorneys in California and Texas."

There **is no** contradiction! Petitioner was **not asked** if he used the letterhead to solicit clients. If he had been asked that question, the answer would have been an unqualified "NO"!

Petitioner was under oath and obligated to tell the truth. Without reviewing a list of everyone sent any communication on letterhead, Petitioner could not state the letterhead had **never** been sent to anyone in Nevada. The only truthful response was he did not **remember** sending the letterhead to anyone in Nevada.

Soliciting clients is a more precise issue that was raised by comparing the activities of Petitioner to those of Applicant Waters, who was using his letterhead to solicit in states where he was not licensed to practice! Petitioner stated he never sent letterhead to solicit Nevada residents because Petitioner has **never** solicited legal business **anywhere at any time!**

V 900 NUMBER TELEPHONE SERVICES

Respondent seeks to taint your Petitioner with the generally unfavorable reputation of 900 telephone information service providers providing primarily adult entertainment. Respondent excludes Petitioner's testimony he was the first 900 information provider to place television advertising for psychic services on network television affiliates because he made commercials accurately describing the service provided and **prominently** displaying the price of the call. Although Petitioner does not have benefit of a transcript, he remembers this

testimony.

The State Bar states, "It was unclear from the evidence adduced at the hearing whether or not a business license was and is required to conduct the type of business that the applicant conducts." (Petition, Appendix H),

Respondent now claims that a business license was in fact required and that the Respondent violated zoning laws. These issues were **never raised before!** Indeed, in prior proceedings, Respondent deliberately avoided addressing these issues, as indicated by the above statement in Appendix H of the Petition.

Respondent claims that making an anonymous inquiry to determine licensing requirements demonstrated a lack of candor in dealing with the Clark County Business License Division and a basis of denial of admission. Apparently, Respondent now recognizes that anonymous inquiries to governmental agencies are a common practice among lawyers, and seeks to abandon its earlier position.

VI DISCRIMINATION BASED ON NON-A.B.A. SCHOOL

Respondent claims Petitioner alleged he was singled out for different treatment, but did not prove it. The comparison of reason for denial of admission to Petitioner with the reported cases of others granted admission after more serious misconduct proves Petitioner was treated differently, which is **discrimination!**

Nevada wants to limit the number of practicing attorneys in Nevada to reduce competition in Nevada. California is located adjacent to Nevada. California has a very competitive legal community; Nevada does not.

Most jurisdictions waive the A.B.A. requirement after the applicant has engaged in the practice of law for a certain number of years, Nevada does not. Why?

Most other jurisdictions accept a Masters Degree from an A.B.A. approved school and program as satisfaction of the A.B.A. graduation requirement. Nevada does not. Why?

Most other jurisdictions adopted the A.B.A. model code to permit out-of-state law firms to use their name partners on the letterhead when not admitted in the state. Nevada does not. Why?

Most other jurisdictions do not require that an office be maintained within the state to practice law in the State. Nevada does. Why?

California has 53 law schools, but only 16 are accredited by the A.B.A. (California Lawyer, January, 1996, page 23). Most of the attorneys in California are graduates of law schools not accredited by the A.B.A. (California Bar Journal, December, 1995, pages 9 - 10). Obviously the best way to reduce competition from California lawyers is to require graduation from an A.B.A. approved law school and subject non A.B.A. graduates to the type of inquisition and discrimination given your Petitioner.

VII CONFIDENTIALITY AND DUE PROCESS

Respondent asserts that it keeps proceedings confidential to protect the applicants. However, this objective can easily be obtained by reporting the cases without the names, a practice often utilized in juvenile court proceedings.

It is not necessary to obtain confidentiality by depriving the public of access to decisions. Confidentiality is only necessary to enable Respondent to deprive the public of its right to the decisions and empower misuse of power.

VIII DENIAL OF PROCEDURAL DUE PROCESS

Willner vs. Committee on Character and Fitness, 373 U.S. 96, 83 S. Ct. 1175, 10 L. Ed. 224 holds that Petitioner is entitled to **notice** of **specific charges** of wrongdoing, and that the failure of the committee to do so and its "fishing expedition" into Petitioner's life violates Petitioner's right to due process.

This issue was raised before the Nevada Supreme Court, which found the notice "including

but not limited to, the unauthorized practice of law in Nevada and such other matters that may reflect on your character and fitness for the practice of law" constituted adequate notice. This is in direct conflict with the ruling of this Court in Willner, supra.

It is interesting that Respondent cites In Re Cheek, 425 Pac. 2d 763. In this case, the procedure followed was that "Before the hearing counsel for the bar served on Petitioner a statement of charges listing 12 specific charges of alleged misconduct." In Check, supra, the Court found 8 of the charges alleging misconduct (each of which was more serious than any misconduct charged to your Petitioner) as "reflecting some discredit on Petitioner, would not of itself warrant denying him admission to the bar." Cheek, supra, was denied admission because he wrote two checks on his employers bank account without authorization and twice lied to his employer about being involved in an accident with a company car.

IX LICENSING AS A COLLECTION TOOL

Your Petitioner argued the three transgressions complained of did not rationally relate to his fitness to practice law or constitute a basis to deny him admission. This is the essence of using licensing as a collection tool. Petitioner was not denied admission for any reason rationally related to the fitness to practice law! Denial of admission thus becomes a tool to collect debts, not to screen applicants based on fitness to practice!

Using licensing as a collection tool is fast becoming the current rage. California and Texas have even enacted laws prohibiting the issuance of drivers licenses to those who owe child support or to those who are not legal residents.

Jurisdictions will continue to use licensing as a collection tool until this Court prescribes the constitutional limitations. This case is before this Court now, and this Court

should use this case to prescribe the constitutional limits of using licensing as a collection tool.

X PREPONDERANCE OF THE EVIDENCE

The three incidents relied upon by Respondent are nothing but minor incidents. The true moral character of Petitioner is established by the 13 testimonials presented to Respondent, which are attached as Appendix B to the Petition.

In Nevada, moral character is established by a preponderance of the evidence. (In Re Farris, 87 Nev. 508, 489 Pac. 2d 1156.) Any objective consideration of the three incidents relied on by Respondent against the extensive testimony provided in thirteen testimonials supplied to Respondent and submitted as Appendix B to the Petition results in a conclusion that Petitioner has sustained his burden of proof. Any objective consideration of Petitioners 24 years in the practice of law in two states without any discipline imposed against the three incidents relied upon by Respondent results in a conclusion that Petitioner has sustained his burden of proof.

XI CONCLUSION

The only explanation of the denial of admission to your Petitioner is that he was the victim of discrimination by Respondent in violation of the Fourteenth Amendment of the United States Constitution. The Petition for Writ of Certiorari should be granted.

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